IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
CAUSE NO. 17-md-2804
MDL NO. 2804

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION)
THIS DOCUMENT RELATES TO: TRACK THREE CASES)

REMOTE VIDEO DEPOSITION OF
CARMEN A. CATIZONE, MS, RPh, DPh
VOLUME II

The deposition upon oral examination of CARMEN A. CATIZONE, MS, RPh, DPh, a witness produced and sworn before me, Amy Doman, Registered Merit Reporter, Certified Realtime Reporter, Certified Shorthand Reporter, Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of the Defendants, in Mount Pleasant, South Carolina, scheduled to begin at 8:00 a.m., on Wednesday, June 16, 2021, pursuant to the Federal Rules of Civil Procedure.

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THE VIDEOGRAPHER: Good morning. We're going on the record at 8:09 a.m. Eastern time on June 16th, 2021. This is Media Unit Number 1, Volume 2 of the video-recorded deposition of Carmen Catizone taken in the matter of In Re: National Prescription Opiate Litigation from the U.S. District Court for the Northern District of Ohio, Eastern Division, Case Number 17-md-2804.

This deposition is being held remotely. My name is Kraig Hildahl from the firm Veritext Legal Solutions, and I'm the videographer. The court reporter today is Amy Doman, also with Veritext.

Will counsel please identify themselves for the record.

MR. SWANSON: We have all counsel on the transcript, Amy. Can we just proceed? Is that okay?

THE REPORTER: Yes, sir. Thank you.

CROSS-EXAMINATION (continued)

QUESTIONS BY BRIAN C. SWANSON:

Q Good morning, Mr. Catizone.

A Good morning, Mr. Swanson.

Q How are you this morning, sir?

A I'm fine, thank you.

Q Terrific. Can you pull out and put in front of you

Exhibit 2, which is your supplemental report in this case?

A Yes, sir.

Q Do you have that in front of you now?

A Yes, sir.

Q Great. Other than that report, do you have any other notes, documents, or aids, either paper or electronic with you today?

A Yes, sir.

Q What else do you have?

A I have all of the exhibits from yesterday on the desk. I have a blank pad of paper for notes, and I have a pen and that's it, sir.

Q Okay. So you don't have any electronic media or anything with notes or guides for you?

A No, sir.

Q Okay. Thank you for confirming that.

Before we launched, you also have the box of possible exhibits that my firm sent over to you?

A Let me check, please.

Q Sure.

A Yes, sir.

Q Okay. Now I can assure you that we're not going to go through all of those documents, so you don't have to worry about that, but I'll try to, as we

go, identify the ones that we might need so you can put those in front of you if you would like to. Okay?

A Yes, sir.

Q Great. Can you please open up your expert report, Exhibit 2, to page 10.

A I'm there, sir.

Q Page 10, if you just flip back one page, this is the section of your report regarding what you call "Corporate Oversight."

Do you see that?

A Yes, sir.

Q On page 10 in the middle paragraph, the one that begins "Chain Pharmacies." Can you go to that paragraph?

A Yes, sir.

Q About midway through, you write: "Pharmacies must maintain systems and methods to store and retain prescription dispensing data and records."

Do you see that sentence?

A Yes.

Q And then the final sentence of that paragraph, it continues: "Pharmacies must utilize their information to identify patterns of diversion to audit the work of their pharmacists, to train its

pharmacy personnel, investigate suspicious prescribers, patients, and pharmacists, and to prevent diversion of controlled substances."

Did you write that, sir?

A Yes, sir.

Q Is it your opinion that every licensed pharmacy in Ohio is required to use its dispensing data to identify patterns of diversion?

A Yes, sir.

Q Is it your opinion that every licensed pharmacy in Ohio is required to use its dispensing data to audit the dispensing of the pharmacists?

A Yes, sir.

Q Is it your opinion that every licensed pharmacy in Ohio is required to use its dispensing data to investigate suspicious prescribers, patients, and pharmacists?

A Yes, sir.

Q If I understand your report and the content of your report, to you that means that the pharmacies must create systems that use dispensing data to alert pharmacists at the store level of certain red flags that you have created when those red flags are triggered; is that accurate?

A Yes, sir.

Q If you flip back to page 9, again, in the corporate oversight, you write that: "These responsibilities" -- that we've just been discussing -- "are reflected in the Controlled Substances Act and relevant Ohio state law."

Is that your opinion?

A Yes, sir.

Q Now, when you say that those -- what you call responsibilities are reflected in the Controlled Substances Act and relevant in Ohio state law, you don't provide any citation to what provisions of the CSA or Ohio state law you are referring to; is that right?

MR. ELSNER: Objection.

A Not in this section, sir.

BY MR. SWANSON:

Q So can you tell me what provision of the Controlled Substances Act states the pharmacy must use its dispensing data to identify patterns of diversion in the way that you have opined in your report?

A There are two or three sections within the CSA that I cannot cite specifically, but I can explain.

If there's a copy you could provide or if I have a copy of the CSA, I could point out those specific provisions. But the sections are, one,

that says that a pharmacy must maintain appropriate records and controls for controlled substances. That is the part that says that they must have dispensing records, and the dispensing data must be appropriate for the distribution and control of controlled substances.

And then the second section talks about being able to identify diversion, abuse, and a fraud. So as a pharmacist and as a regulator for 35 years, those sections, to me, and to pharmacists, represent my opinion and the basis for my opinions.

Q Can you help me by identifying by number the provision that you are relying upon?

MR. ELSNER: Objection.

A I don't have it in front of me, but it would be part of 1306.04, .06, those two sections of the provisions of the Controlled Substances Act.

BY MR. SWANSON:

Q So you are relying on 1306.04, which is the "Corresponding Responsibility" section?

A Correct.

Q That's one of the sections you're relying on?

A One of the sections, sir.

Q Okay. And if you turn to page 25, we looked at that yesterday. You've quoted that provision in

its entirety. So why don't you turn to 25.

A I'm there.

Q Okay. And you can see where you've quoted 1306.04. Can you show me where in 1306.04 it states that a pharmacy must use its dispensing data to identify patterns of diversion?

MR. ELSNER: Objection.

A Again, sir, as I explained yesterday, the application of 1306.04 and 1306.06 and the interpretation based upon my experience in this area and regulation, is where the basis for my opinion comes from.

BY MR. SWANSON:

Q All right. I just want to make sure I am clear, then, on your testimony. When you say that the pharmacist -- the pharmacy's obligation to use dispensing data to identify patterns of diversion is required by the Controlled Substances Act, the provisions that you rely upon are 1306.04 and 1306.06; is that correct?

MR. ELSNER: Objection.

A In part, sir. It's the entire CSA.

BY MR. SWANSON:

Q Okay. Well, I want to know -- and I'm asking if you can identify anywhere in the CSA where it

states that a pharmacy has an obligation to use its dispensing data to identify patterns of diversion. Is there anywhere in the CSA that specifically requires that obligation?

MR. ELSNER: Objection.

A Specifically, the CSA identifies pharmacy as a practitioner, as the DEA has. And therefore, the same responsibilities that a pharmacist has is on a pharmacy. And if I can, if I can point you down to the next paragraph and the testimony of Demetra Ashley from the DEA who said that the obligation to identify any red flags relating to a controlled-substance prescription to resolve them before filling a prescription, and to document any resolution of red flags is a well-recognized responsibility of the pharmacist in the professional practice of pharmacy.

And since the DEA has interpreted practitioner to mean pharmacy, corporation, and pharmacist, that also is the basis of my opinion in this report.

BY MR. SWANSON:

Q Okay. But right now, I want you to stick with me, okay? I'm asking you about the Controlled Substances Act and any specific provisions. I'm not asking you about what another witness might

have said. And I can go -- we can go there if you want to.

But I first want to get your testimony about what specific provisions you would rely on when you are testifying in court and saying that the defendants violated because they didn't have -- if they didn't have the systems that you claim they should have had. Do you understand the question I'm asking you?

MR. ELSNER: Objection.

A I do, sir, but I don't think you're understanding my answer. So my answer is that the Controlled Substance Act in its entirety forms the basis and that each individual provision within there was used to substantiate my position. I've explained to you that the provision that says the appropriate dispensing and recordkeeping, although it may not specifically say what they're to do to the utmost detail, that is the basis for my opinion and those are the provisions that I've used.

And that's the answer I've been giving you several times and the same answer I will give repeatedly if you continue to ask that question.

BY MR. SWANSON:

Q Let me see if we can at least get agreement on

this. Sitting here today in response to my questions to what provisions of the CSA, in your view, require a pharmacy to use dispensing data to identify patterns of diversion, the two provisions that you've provided to me sitting here today are 1306.04 and 1306.06; is that true?

A No, sir.

MR. ELSNER: Objection, asked and answered.

A You asked me that question, I've answered a couple times saying that those are some of the provisions. My answer is all of the CSA, all provisions, form the basis for that responsibility.

BY MR. SWANSON:

Q Okay. So 1306.07, that's one?

A I've said all of the provisions of the CSA taken in total are the basis for my opinions, sir.

Q Any state law that you rely on for your opinion that a pharmacy is required to use its dispensing data to identify patterns of diversion?

A Again, the state law mimics federal law and pharmacists in states are responsible to comply with federal law. So my answer would be the same. The CSA in its entirety is the basis for pharmacists at the state level to also comply with that responsibility in my opinion.

Q So it's your opinion that if a pharmacy -- and go outside of Ohio. Any pharmacy in the United States that isn't using its dispensing data to provide the pharmacists at the counter with information to identify patterns of diversion, that pharmacy is in violation of the Controlled Substances Act? Is that your testimony?

MR. ELSNER: Objection.

A It's my opinion that that pharmacy, then, is not instituting, implementing, and enforcing appropriate controls for the distribution and dispensing of controlled substances. So my answer is yes.

BY MR. SWANSON:

Q And can you identify for me a pharmacy anywhere in the country that uses its dispensing data to identify patterns of diversion that are provided to the pharmacists prior to dispensing a medication?

MR. ELSNER: Objection.

A I can't specifically identify, but I can identify that the defendants in this case did not do so, and therefore, didn't meet the standard of care.

BY MR. SWANSON:

Q And I understand that's your opinion. But my question was a bit broader.

Can you identify a pharmacy anywhere in the country that uses dispensing data to identify patterns of diversion that are then provided to pharmacists prior to dispensing medication. I'm not limiting it. Anywhere in the country, can you point to a pharmacy?

MR. ELSNER: Objection.

A I can't point to one today, but I would be glad to do the research and find a pharmacy for you. I'm sure they exist out there.

BY MR. SWANSON:

Q Well, I mean, you worked for the NABP for 30 years. I imagine you must have interacted with pharmacies quite a lot in that position, didn't you, sir?

A Yes, I did.

Q And you worked at a pharmacy, you said, all the way through 2004, you were working as a pharmacist, right?

A Yes, sir.

Q And given all of that experience and all of those interactions with pharmacies all over the country, and boards of pharmacy all over the country, sitting here today you can't identify a single pharmacy anywhere in the country that uses dispensing data to identify patterns of diversion

provided to pharmacists prior to dispensing a medication, true?

MR. ELSNER: Objection.

A No, sir. Thanks to you refreshing my memory, I can say for certain that the pharmacy I worked at in Albertsons chain pharmacy uses dispensing data and provides that dispensing data prior to the pharmacist dispensing prescriptions.

BY MR. SWANSON:

Q How does their system work?

A I don't know the mechanics behind it, sir. I know that they provide dispensing data to the pharmacists as part of the process before dispensing a prescription.

Q When is the last time you saw the Albertsons' dispensing data or dispensing system?

A I reviewed their error reporting and dispensing system about three weeks ago, sir.

Q Do you do consulting for Albertsons?

A No, sir, I don't.

Q So what was -- why were you reviewing their error reporting and dispensing system three weeks ago?

MR. ELSNER: Objection.

A It was for another client, sir.

BY MR. SWANSON:

Q And what was -- what was the reason that you were reviewing their reporting and dispensing system?
A The client that I am working with has a system that will centralize the distribution management of the COVID vaccine for pharmacies and integrate that into their dispensing system, as well as provide alerts to patients. As so as part of that process, we reviewed their dispensing process to determine what alerts the pharmacist receives, and at what point the pharmacists would be able to utilize this system and an error reporting system as part of the dispensing process.
Q And is it your testimony that this system at Albertsons that you say you looked at recently, will alert a pharmacist of patterns of diversion?
MR. ELSNER: Objection.
A No, sir, your question to me was, was I aware of any pharmacy in the United States that used dispensing data to alert pharmacists or to provide pharmacists with information about diversion.
MR. ELSNER: Objection.
A And Albertsons provides that information. I'm not sure what the alert system is for that. But I know dispensing data is one of the tools and information provided to pharmacists as they dispense

prescriptions.

BY MR. SWANSON:

Q But does this Albertsons' system that you now say provides this information, does it alert the pharmacist at the counter of a potential pattern of diversion like you say is required under the CSA?

MR. ELSNER: Objection.

A Two points, sir, if I can. One, I did not say it was required at the counter. I said they had to have a system that uses dispensing data that provides information to the pharmacists prior to dispensing the prescription.

Second, I do not know Albertsons' system enough to comment on that. So I would have to say I don't know about that.

BY MR. SWANSON:

Q We talked a bit yesterday when you were with the NABP, one of the things that the NABP did is you would publish -- you would write and then publish model rules and model acts that you would provide to the state.

Do you recall that?

A Yes, sir.

Q If you can open up please the folder that's marked WAG19-1-9. I'm going to try to introduce this as

an exhibit online too.
A You mean WAG 19, not WAG 19-1-9, not 1919, just WAG 19, right?
Q Yes, sir, one, nine.
And can I ask the court reporter what exhibit I should mark this as.
THE REPORTER: This will be 16.
(Exhibit 16 was marked for identification.)
A I have it open, sir.
BY MR. SWANSON:
Q And I'm going to -- I'll publish it to or at least introduce it so everybody can have it. Okay.
Exhibit 16 is a document, an "August 014 Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy"?
Is that what you have in front of you?
A Yes, sir.
Q Terrific. We're on the same page, then.
So I just read the title of Exhibit 16. Are these -- is this an example of the model rules and regulations that the NABP would publish when you were there?
A Yes, sir.
Q You're familiar with this document, right?
A Yes, sir.

Q Who drafts this document? Is it sort of a team effort at NABP?
A Yes, sir.
Q What's your contribution or what was your contribution to the model act in 2014?
MR. ELSNER: Objection.
A I provide the final staff review before it's presented to the board of directors for ultimate approval.
BY MR. SWANSON:
Q Okay. So when this -- when the Model State Pharmacy Act goes out and gets published, it has your sign-off, right?
A Yes, sir.
Q I think you said yesterday that the model act describes what you'd call best practices for state boards to try to implement; is that right?
A Yes, to some degree, sir.
Q Now, if you look at the table of contents on the third or fourth page, you can see there's a section for "Model Rules for the Practice of Pharmacy."
A Yes, sir.
Q And I can -- I can publish this if that makes it easier for everybody. At least I think I can.
MR. SWANSON: How did I do, is everybody

seeing the Exhibit 16?

MR. ELSNER: Yes.

MR. SWANSON: Okay. Thank you.

BY MR. SWANSON:

Q So Mr. Catizone, you can see if you scroll down three or four pages, there's a section there Model Rules for the Practice of Pharmacy. Do you see that?

A Yes, sir.

Q And one of the sections you can see in there is automated pharmacy systems; is that right?

A I can't see it on the screen, but I believe it's there, sir.

Q All right. I can --

MR. ELSNER: Carmen, take the time if you can't see it on the screen to refer to --

BY MR. SWANSON:

Q Or you can look at whichever one is easier for you, sir. I just have it up so everyone can see it.

MS. FUMERTON: Brian, it's a little small if you can make it bigger.

MR. SWANSON: I sure can. Thanks.

MR. ELSNER: Mr. Catizone, it's on the page that ends 9630.

THE WITNESS: Okay. Thank you.

BY MR. SWANSON:

Q Are you there?

A Yes, sir.

Q Okay. And again, and what are automated pharmacy systems?

A They're a variety of systems. They can be the dispensing process, they can be the pill-counting machines, it's technology utilized within the pharmacies.

Q And is it the automated pharmacy system that, in your view, would be the system that should alert a pharmacist to potential patterns of diversion?

A It would be one of the systems, sir.

Q And then if you go down -- or if you flip your copy in to page 91, you'll see the section on automated pharmacy systems. And you'll get there faster than I will, because there's really no good way to do this on the screen. But if you turn to page 91?

A Yes, sir.

Q Okay. Page 91 you can see is Section 8 and it's on "Automated Pharmacy Systems," right?

A Yes, sir.

Q Now, is there anywhere in the section that you and your team put out on automated pharmacy systems that requires a pharmacy to implement a system

where it uses its dispensing data to identify patterns of diversion? Can you point me anywhere in the section that you signed off on that says that that's a requirement?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. SWANSON:

Q Okay. Where?

A Can I explain and then point to the section at the same time, sir?

Q You can answer it however you feel appropriate.

A Thank you.

So the Model State Pharmacy Practice Act is reflective of what occurs at the state level. And perhaps just as an explanation, what is contained in the act is very relevant and forms the basis of the model rules.

And the model rules then reflect the interpretation and implementation of the act. In the act it talks about the practice of pharmacy. It talks about drug utilization review, and it talks about prospective drug utilization review. In this particular section on page 92 on Number 5 at the bottom, it says: "Records and/or electronic data kept by automated pharmacy systems shall meet

the following requirements. All events involving the contents of the automated pharmacy system must be recorded electronically."

So taking the practice act, which requires the pharmacist to appropriately dispense prescriptions, resolve red flags and document that, this system then must have some way of recording that electronically, whether it's part of the alerts for the pharmacist, or whether there are other tools that are available to the pharmacist.

That's the interpretation of NABP and the guidance to the states to -- in direct response to your question.

Q Okay. I thought I heard you talking about documentation.

My question was focused on this requirement where you say that every pharmacy in the country is required to have a -- to use its dispensing data to identify patterns of diversion at the pharmacy counter. And I'm wondering if that requirement, that you now say is a requirement, is included anywhere in the model rules that you signed off on?

MR. ELSNER: Objection, asked and answered.

A And my answer was, yes, sir. The model rules must be implemented in accordance with the practice act

as with state law. There are no model rules that exist without an existing state law. The practice act forms the basis for that requirement of the dispensing data being utilized as part of the appropriate controls for dispensing controlled substances. The model rules then further identify in terms of technology and operations, what those events are and the rules say all events, which would include utilizing dispensing data to ensure the appropriate dispensing drug utilization review and distribution of prescriptions.

BY MR. SWANSON:

Q I'm not asking -- sir, I'm not asking about drug utilization review. I'm asking about the system that you talk about in your report, right? Is a system where you say a pharmacy has to use dispensing data to identify patterns of diversion, and then notify the pharmacist at the store level of a possible red flag.

That's the system that you claim every defendant was required to implement. Do I have that right?

MR. ELSNER: Objection; asked and answered.

A Yes, sir.

BY MR. SWANSON:

Q And so my question is, where in the model act that you signed off on, is that express requirement, you now claim is a requirement, where is it included in the model act? That's my question.

MR. ELSNER: Objection. Objection; asked and answered, several times.

A If I can explain again, sir, you cannot separate in the practice of pharmacy, drug utilization review and appropriate dispensing and the utilization of dispensing data to identify patterns of diversion or red flags. They are all one end product that must be used together.

The practice act requires DUR, the practice act requires that the pharmacist must comply with all federal and state laws, and the practice act says there must be appropriate dispensing of those products. And that is, in its entirely, what forms the basis then for any system to utilize dispensing data so the pharmacist is aware of that when they are conducting DUR and other checks to make sure that the patient receives the right medication and the prescription is for a legitimate medical purpose.

BY MR. SWANSON:

Q When you were with the NABP, did you have any

knowledge or awareness of the dispensing systems that you were utilized by the retail chain pharmacies in this case?

MR. ELSNER: Objection.

A From the view of a state board of pharmacy or NABP, but not as a practicing pharmacy. In those systems, I had experience, again, within the Osco/Albertsons system as a system as a pharmacist.

BY MR. SWANSON:

Q Got it. I guess my question was, though, by virtual of your role at the NABP, did you ever go out to different pharmacies and look at their systems and comment on them or advise?

A No, sir.

Q Okay. I'm going to move on to "Corresponding Responsibility." You provided opinions in this case regarding pharmacists corresponding responsibility and we talked a bit about --

A Mr. Swanson? Excuse me. Are you -- am I done with the model act? Do I need this anymore?

Q Yes, you can set that aside for now.

A Thank you, sir.

Q Thank you.

A Sorry for the interruption.

Q That's all right.

You provided opinions in this case and have written in your report we talked a bit about the corresponding responsibility in Section 1306.04, right?

A Yes, sir.

Q One of the things we talked about yesterday was that the state boards of pharmacy, sometimes they will put out newsletters to provide guidance and education to the pharmacists who practice in their state, right?

A Yes, sir.

Q And Ohio is one of the states that did that, right?

A Yes, sir.

Q They would periodically write about topics that were important to pharmacists who were dispensing medications, including opioids, right?

A Yes, sir.

Q Sometimes they would write about issues like laws and regulations that dictate the practice of pharmacy, true?

A Yes, sir.

Q And we talked yesterday, while you were at the NABP, you were an editor of portions of those letters but not the entire letter, right?

A Yes, sir.

Q Your role was to act as the editor of NABP content and for state-specific content that was the responsibility of whoever the lead person was for the state board of pharmacy, right?
A Yes, sir.
Q But it was important that those newsletters contained accurate information regarding the practice of pharmacy, right?
A The responsibility for the accuracy rested with the state, sir.
Q Or with you, if it was your content, right?
A Yes, sir.
Q Or the NABP's content, I should say?
A Yes, sir.
Q If you can open up the envelope that's marked WAG 08?
A Yes, sir.

MR. ELSNER: I'm going to get this out to everybody else. We're now on 17.

(Exhibit 17 was marked for identification.)

MR. ELSNER: Just for time sake, if it's okay with everybody, I'm not going to put it up on the screen, but I have distributed it.

BY MR. SWANSON:

Q Okay. The document you have in front of you is a

May 2011 newsletter from the Ohio state board of pharmacy, correct?

A Yes, sir.

Q And if you look at the second page, you can see that in the bottom right, you're identified as the national news editor and executive editor, right?

A Yes, sir.

Q Looking at the content of Exhibit 17, it's a relatively short newsletter, right?

A I don't know if this is the entire newsletter, sir. So I can't --

Q It might just be a portion?

A Yeah. The middle portion is missing and I don't know if this is the first or second page of the Ohio, so I can't comment if it's the short or not.

MR. ELSNER: I'm going to object to the completeness of the document. But you can continue.

MR. SWANSON: Okay. Thanks.

BY MR. SWANSON:

Q If you look at the first page, there's a section that reads: "Corresponding responsibility is needed more than ever." Right?

A Yes, sir.

Q And this section continues to the second page of

the document. So you at least have a complete iteration of the section on the corresponding responsibility. Do you agree with that?

MR. ELSNER: Objection. I think it -- I think what it shows is that the document was originally four pages and you're showing us the first page and the fourth page.

MR. SWANSON: Right. But Mr. Elsner, what I just said is, it's a complete iteration of that section and I asked if he agreed with that. So I appreciate the objection. But I'm just asking --

(Simultaneous conversation.)

MR. ELSNER: I just want the record to be clear. Go ahead. You can answer.

A Sure. This is not the format that I've seen the newsletter in. And I don't know for sure if it's complete. It appears to be complete, but I can't say for certain that it is.

BY MR. SWANSON:

Q Okay. It begins: "In last May's newsletter, the board mentioned that it is having a tremendous problem in Ohio with so-called pain clinics that are doing nothing but providing large amounts of controlled substances, particularly oxycodone and hydrocodone to people who have no legitimate

medical need for them."

Do you see that?

A Yes, sir.

Q And do you recall that was a problem in Ohio back in 2011?

A I recall it was a problem, yes, sir.

Q If you turn to the next page, then, it continues on, that second complete sentence on page 2: "Since most of the pharmacists in Ohio have taken their corresponding responsibility requirements seriously, the patients, quote/unquote, of these operations are having more and more problems finding a place to get the prescriptions filled. The board has had calls from pharmacies as far away as Virginia and South Carolina asking about the legitimacy of these prescriptions."

Did I read that correctly?

A Yes, sir.

Q And do you recall that, at the time, that the Ohio Board of Pharmacy was of the view that its pharmacists were practicing their corresponding responsibility and that was leading patients to leave the state to try to get their prescriptions filled?

MR. ELSNER: Objection.

A I don't recall that, sir.
BY MR. SWANSON:
Q But you agree that that was the view of the state board of pharmacy expressed in Exhibit 17, true?
MR. ELSNER: Objection.
A No, sir, I would ask for your indulgence to allow me to read the entire article, rather than just comment on individual sections, if there's time to do that, sir.
BY MR. SWANSON:
Q Well, there's probably not time to do that so --
MR. ELSNER: Objection.
MR. SWANSON: I will ask you to comment.
BY MR. ELSNER:
Q I understand your request. I will just ask if you are able to comment on some of the provisions, I'm going to ask you about that. How about that?
A Can I clarify and explain that, sir?
Q Sure.
A Yesterday it was represented to me that the definition of doctor shopping by the Ohio Board of Pharmacy was five or more prescribers. When I actually researched that last night in the Ohio practice act rules, it was only more than one prescriber. So I don't want to misrepresent or

take something as an assumption that turns out not to be correct today.

So I will comment to the best of my ability, but I cannot make assumptions or take misrepresented information again to give the wrong answer to you.

MR. SWANSON: Okay. Well, I'll move to strike that response. And I understand -- I understand that you can only comment to the extent you are able when I ask you these questions.

BY MR. SWANSON:

Q Here's the question I --

MR. ELSNER: Wait.

BY MR. SWANSON:

Q -- want to ask you.

MR. ELSNER: But Mr. Catizone, please take the time that you need to put whatever sentence he asks you about in the appropriate context, okay?

THE WITNESS: Yes.

MR. SWANSON: I agree with that. I agree with that.

BY MR. SWANSON:

Q I want to ask you in the second column on the second page. The second complete sentence begins with the word "please."

Do you see that?
A No, sir, I apologize. I don't see that.
Q You don't need to apologize.
Second column, second sentence.
A Yes, sir. I found that.
Q Okay. It says: "Please note that the pharmacist is the one held accountable for making that independent judgment, not the employer, supervisor, or fellow employee."
Do you see that?
A Yes, sir.
Q Do you recall that it was the Ohio state board of pharmacy's view that the corresponding responsibility rested with the pharmacist; the pharmacist was the one that was accountable for exercising that judgment, and not the employer, supervisor, or fellow employee?
MR. ELSNER: Objection.
A I don't recall that, sir.
BY MR. SWANSON:
Q Do you at least agree with me that the state board of pharmacy is telling the pharmacists that it sends out this newsletter to, that it's the pharmacist who has the corresponding responsibility, and not the employer, supervisor,

or fellow employee?

MR. ELSNER: Objection.

A Based on the context of the newsletter and other information I know about the Ohio Board of Pharmacy, the newsletter is directed to pharmacists, practicing pharmacists, and that's why the content may have referred to pharmacists. But I know that the Ohio Board of Pharmacy at the time that I was at NABP took action forth -- against pharmacies for violating or not complying with their corresponding responsibility. So I think this is part of the answer or part of the position of the Ohio Board of Pharmacy.

MR. ELSNER: I'm just going to lodge an objection. You haven't established that Mr. Catizone was involved in the writing of any of this. In fact, I think his testimony was that he --

MR. SWANSON: Mike, let's stop the speaking objections and the coaching of the witness. Okay. Your objection is on the record and it's noted.

MR. ELSNER: It's important context, not for the witness. The witness already testified that his section was in pages 2 and 3. I want the record to be clear because you seem to indicate --

seem to suggest that he actually wrote this, and it's not clear to me that he wrote it or even saw it. And I think you have to lay that foundation.

MR. SWANSON: There's been zero suggestion that he wrote this, Mike.

MR. ELSNER: I disagree. The implication was you started with his name on the last page of the document. So please continue. But I'm going to continue to object to the use of this document if you don't lay the proper foundation. You can continue.

BY MR. SWANSON:

Q All right. So again, my only question on this is, you said this is a document that went out to pharmacists, correct?

A Yes, sir.

Q And the intent was to educate pharmacists on laws and regulations among other things, correct?

A Yes, sir.

Q And what the Ohio state board of pharmacy told the pharmacists that it sent this letter to is that both Ohio laws and rules and federal laws and regulations place a corresponding responsibility on the pharmacist to make a judgment and hold the pharmacist accountable for that judgment, right?

A I can only comment to say that's what the newsletter says. I can't comment beyond that, sir.
Q Fair enough. You can set that one aside.
If you look at page 78 of your report, I'm going to pivot to a new topic here, briefly.
Are you on page 78?
A Yes, sir.
Q Page 78 of your report, you fault Walgreens -- and I'll just read: "Even so, as late as 2017, Walgreens refused to allow 'blanketly' refusing to fill prescriptions from a prescriber as long as the prescriber had an active DEA number."
Do you see that?
A Yes, sir.
Q You say: "Instead, it, Walgreens insisted pharmacists evaluate each prescription on a 'case-by-case basis." Right?
A Yes, sir.
Q And in your view, that was a fault of Walgreens. Walgreens was doing wrong by refusing to implement blanket refusals to fill, right?
MR. ELSNER: Objection.
A Yes, sir.
BY MR. SWANSON:
Q And does that opinion apply to other pharmacies as

well, that other pharmacies also should have had blanket refusal to fill policies?

A Based upon the information, if the physician was involved in writing and prescribing prescriptions for nonlegitimate purposes and the pharmacist suspected diversion. And then the diversion could or could not be confirmed, the answer would be yes, sir.

Q Now, Walgreens policy was to ask their pharmacists to exercise their own independent judgment on a case-by-case basis, right?

A Yes, sir.

Q But it's your opinion that a pharmacy should mandate that its pharmacists refuse to fill prescriptions written by some doctors, even though those doctors still have an active DEA number, right?

A Based upon information that the pharmacist would have about that prescriber, yes, sir.

Q Do blanket refusal to fill policies like the one you advocate, do they interfere with the pharmacist's independent professional judgment?

A No, sir.

Q When I asked you yesterday what the independent professional judgment meant, you said that: "The

pharmacist is supposed to make an objective decision and not be influenced by any other factors such as corporate metrics or corporate requirements."

Do you remember giving that testimony?

A Yes, sir.

Q Doesn't the -- doesn't a blanket refusal to fill take away the pharmacist's ability to exercise independent judgment because it's based on a corporate requirement?

A No, sir.

MR. ELSNER: Objection.

BY MR. SWANSON:

Q Why not?

A The blanket refusal would be an independent judgment made by the pharmacist at the store. What is occurring with these policies is that the pharmacists from Walgreens in documents that I've looked at have asked to have certain prescribers put on a prescriber list so that prescriptions would not be filled by those prescribers and that was refused, and the policy back said, we must take these on a case-by-case basis.

If the pharmacist's independent judgment has determined that the prescriber is diverting

medication to not writing medications for legitimate medical purposes, then the pharmacist should make the independent judgment that they are not going to fill prescriptions for that prescriber for a controlled substance.

And I say that also based on my experience as a pharmacist, when a physician exhibited this type of behavior, we reported him to the state board of pharmacy, and I personally refused to fill any prescriptions for that doctor for controlled substances until the DEA or board of pharmacy had investigated that prescriber or medical board and provided back to me clearance that the pattern and actions were correct.

Q Have you seen evidence in this case of Walgreens' refusal to fill files?

A Yes, sir, I have.

Q And you didn't cite those in your report. Did you actually review them?

A Yes, I did cite them in my report, sir.

Q Okay. So you have seen evidence of Walgreens pharmacy -- pharmacists using their independent judgment to refuse to fill prescriptions that they felt were suspicious or illegitimate? You've seen that, right?

MR. ELSNER: Objection.

A So I clarify, sir, I looked at the good faith dispensing checklist that each Walgreens pharmacist -- and on there I thought there was refusal to dispense. If that's not the document, then I'm not sure exactly what you're referring to or if I reviewed that document.

BY MR. SWANSON:

Q Was it your view while you were at the NABP that blanket refusal to fill policies improperly interfered with the pharmacist's independent professional judgment?

MR. ELSNER: Objection.

A No, sir.

BY MR. SWANSON:

Q At the NABP, did you advocate that pharmacy stores should implement blanket refusals to fill for prescribers?

MR. ELSNER: Objection.

A I advocated that the pharmacists should use independent judgment and if they determined that, then they had all the writing authority to blanketly refuse to fill a prescription from a prescriber, yes, sir.

BY MR. SWANSON:

Q Well, but you're talking about a pharmacist blanketly refusing to fill. I'm asking about a pharmacy mandating that its pharmacists refuse to fill for a prescriber.

Do you see the difference there?

A Yes, sir.

Q And certainly, a pharmacist could determine that he or she doesn't trust the prescription that he's seeing from a physician and be suspicious of those and not fill them.

My question is whether, at the NABP, you advocated that pharmacies should implement blanket refusal to fill policies to prevent all of their pharmacists from filling prescriptions from certain prescribers.

Is that something you advocated at NABP?

MR. ELSNER: Objection.

A Yes, sir. Because NABP and the DEA feel that the pharmacy, as well as the pharmacist, is the registrant and responsibility and also held a corresponding responsibility.

I advocated while at NABP that the pharmacy incorporation should have appropriate controls and empower the pharmacist to make those independent judgments and provide the tools and support for the

pharmacist to be able to do that in order to combat diversion. So the answer is yes.

BY MR. SWANSON:

Q But a blanket refusal to fill policy is not empowering a pharmacist to use independent judgment. It is taking away a pharmacist's independent judgment, correct?

MR. ELSNER: Objection.

A No, sir.

BY MR. SWANSON:

Q So if a pharmacy company tells its pharmacists, you cannot fill any prescriptions written by Dr. Smith, in your view, that's empowering the pharmacist to use his or her independent judgment when he gets a prescription from Dr. Smith?

MR. ELSNER: Objection.

A Yes, sir. And it goes back to your earlier question.

BY MR. SWANSON:

Q That's fine.

A They are using dispensing data by the corporation to make that determination with the pharmacist so the corporation that is assuming responsibility providing the tools to the pharmacist needed to make such a decision.

Q Okay. I'm going to introduce a new exhibit. I'm sorry that I'm rushing, but I'm -- time is tight.

If you can open up WAG 23.

(Exhibit 18 was marked for identification.)

A Excuse me, Mr. Swanson?

Q Yes.

THE WITNESS: I think Ms. Fumerton has her hand raised. I don't know if she's trying to get someone's attention, so she's blocking my screen and I can't see and so...

MR. SWANSON: She may well be.

MS. FUMERTON: Am I on video? Please tell me I'm not. Actually, you know what? Brian, could we -- I'm sorry, I did not mean to do that. But Brian, could we just take a quick break? I'm sorry. I know it's not an hour. Just about five minutes?

THE WITNESS: Fine with me.

MR. ELSNER: We haven't gone an hour but what's the reason for the break? The witness is available.

MS. FUMERTON: Just a quick break. We have been going about an hour.

MR. ELSNER: It hasn't been an hour.

MR. SWANSON: Well, here, let me do --

SPECIAL MASTER COHEN: If someone needs a break, we ought to take a break.

MR. SWANSON: Okay.

THE VIDEOGRAPHER: We are going off the record at 8:59 a.m.

(A recess was taken.)

THE VIDEOGRAPHER: This is the Media Number 2 in the deposition of Carmen Catizone. Today is June 16th, 2021. We're going to back on the record at 9:07 a.m.

BY MR. SWANSON:

Q Mr. Catizone, I have marked as Exhibit 18 a document. It has an email cover dated March 10, 2015, an email to the stakeholder member organizations from you, and then it attaches the document that I want to talk about, which is the "Stakeholders Challenges and Red Flag Warning Signs Related to Prescribing and Dispensing Controlled Substances."

Is that the document that you have in front of you, sir?

A Yes.

Q This is a document that you've cited throughout your report in this case, correct?

A Yes, sir.

Q You've relied on this document, among others, to support your analysis of red flags in this case, right?
A Yes, sir.
Q This document was created -- Exhibit 18 was created while you were the executive director at NABP, right?
A Yes, sir.
Q You sat on a panel or a committee that met to discuss the contents of this document, true?
MR. ELSNER: Objection.
A It was not a formal committee, sir. It was just a stakeholder group or coalition.
BY MR. SWANSON:
Q Okay. Call it coalition, committee panel, whatever you want. It was a group of folks that got together to create the content of this document, right?
A Yes, sir.
Q Those groups or entities are listed on the beginning page of the actual stakeholder document, right? It starts with the American Academy of Family Physicians?
A Yes, sir.
Q And the entities that are listed on that

page ending in 240, those were the entities that participated in the creation of this red flag warning signs document, right?

A Yes, sir.

Q Were you the principal drafter?

A I was the executive editor, so to speak, sir.

Q Did you sort of have responsibility for the final content of the document?

MR. ELSNER: Objection.

A My responsibility was to coordinate all of the content and pull it all together, sir.

BY MR. SWANSON:

Q And do you stand behind the content of the document, Exhibit 18?

MR. ELSNER: Objection.

A Yes, sir, but the individual content areas were the responsibility of the various stakeholders. I did not have control over that, simply to make sure that the document fit together as a cohesive document, sir.

BY MR. SWANSON:

Q Right. But the document went out with your support, right?

A Yes, sir.

Q Do you believe that the document, Exhibit 18, was

an important tool for helping pharmacists to detect possible diversion?

MR. ELSNER: Objection.

A Not exactly, sir.

BY MR. SWANSON:

Q Okay. What was the purpose of this document?

A The purpose of this document was to foster communication between the stakeholders about red flags and the challenges that each of those groups faced so that the other groups would have a better understanding of what their responsibilities were and why pharmacists/prescribers were reacting and doing the things that they did.

Q One of the things that the stakeholders document does is identify possible red flags of diversion, right?

A Yes, sir.

Q Why was it necessary for the NABP to create a document describing possible red flags of diversion? Why not just rely on the DEA's definition of red flags?

MR. ELSNER: Objection.

A So back to the purpose of the meaning of the document. There were problems between prescribers and pharmacists regarding red flags and

corresponding responsibility. And so the red flags were used as discussion points between the groups to identify areas where there had been challenges and where physicians didn't understand why pharmacists and pharmacies had corresponding responsibility and why pharmacists were doing the things they did.

BY MR. SWANSON:

Q What complaints did the physicians have about pharmacists corresponding responsibility?

A Just before the organization of the stakeholders document, at the AMA annual meeting, one of the regional AMAs passed a resolution and the resolution said that pharmacists should simply fill prescriptions from the doctors and that pharmacists should provide no check or no second-guessing of those prescriptions, and that the pharmacists were interfering with the practice of medicine by exercising their responsibilities and prospective drug utilization review.

The particular issue was between Walgreens and the AMA. And we were approached by Walgreens and the AMA to convene a meeting of the stakeholders to try and resolve that communication issue, because pharmacists were conducting DUR questioning

patients and questioning prescribers in accordance with the corresponding responsibility.

Q So if I -- let me break that down a bit. You were approached by Walgreens and the AMA to convene this group of stakeholders?

A Yes, sir.

Q And who was it from Walgreens?

A I remember the individual from the AMA was one of their attorneys. And I think there were several people at Walgreens, but I can't remember specifically who it was.

Q And you said the circumstances where the AMA had passed a resolution asking, in essence, that the pharmacists stop challenging their prescribing decisions and just dispense medications that they prescribed. Is that a fair assessment?

A The second part is, sir. The physicians said that pharmacists should just dispense any prescription that's written.

Q And the folks at Walgreens had a problem with that because they had been calling the physicians to check on a prescription or to confirm that the prescription was appropriate, and that was upsetting the doctors, right?

MR. ELSNER: Objection.

A It was part of the problem. Some of the pharmacists were calling and asking for x-rays, MRIs, and other information that the physicians felt extended way beyond what the pharmacist's responsibility was.

BY MR. SWANSON:

Q Okay. So the folks at the AMA thought that the Walgreens pharmacists were doing too much inquiry into the doctor's practice; is that fair?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. SWANSON:

Q And the folks at Walgreens wanted guidance on what they should be doing so that they could still meet their corresponding responsibility in dispensing medications, right?

A The purpose was that NABP would serve as an objective third party and open the lines of communication so that physicians and AMA would understand what pharmacists needed to do. And then pharmacists then wouldn't encroach beyond what the responsibilities were into the practice of medicine as well.

Q Does the stakeholders challenges and red flags warning signs document appropriately strike the

balance in your view as between a pharmacist's obligation and a doctor's obligations?

MR. ELSNER: Objection.

A To the extent that the individual red flags that were discussed, yes, sir.

BY MR. SWANSON:

Q Now, in the stakeholders document at page 10, you can see there's a Section 3 that discusses red flags. I'll give you a second to get there.

A I'm there, sir.

Q Okay. So Section 3 is the red flags section of the stakeholders document, correct?

A Yes, sir.

Q The section then breaks out, you know, what are red flags to prescribers and what might be red flags to pharmacists, right?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. SWANSON:

Q And if you want to see what the red flags are for the pharmacists, you would turn to page 14 and you'd see what was identified by the group as pharmacy red flags, right?

MR. ELSNER: Objection.

A Some of the red flags, sir, yes.

BY MR. SWANSON:

Q What do you mean by some of the red flags?

A The document does not include all of the red flags that a pharmacist may encounter. It was again, red flags that the group, the stakeholders, wanted to have more discussion around.

Q Are you saying that the red flags that are identified on page 14 are the red flags that the stakeholders wanted to have more discussion around? Is that -- did I understand that correctly?

A Yes, sir.

Q And you're saying that there are additional red flags that aren't included here?

A Yes, sir.

Q And I was going to ask you about that because these -- the red flags that are identified in -- on page 14 don't match up exactly with the red flags that you've identified in your report. Do you agree with that?

A Yes, sir.

Q Would you agree with me that reasonable minds can differ as to what constitutes a red flag to a pharmacist?

MR. ELSNER: Objection.

A No, sir.

BY MR. SWANSON:

Q So when you say that it's a red flag if a patient travels more than 25 miles to see his or her prescriber, you're saying if somebody said I think it's more reasonable to be -- to set it at 35 miles, you'd say no, reasonable minds can't disagree about this, it's 25 miles?

MR. ELSNER: Objection.

A The question as you've posed it, the DEA in their guidance in other documents have pointed out specific red flags. So distance is a red flag. 25 miles is a parameter that, as I've determined, is a safe parameter to utilize. So a pharmacist may, in their professional and independent judgment, make a determination that 30 miles or 20 miles may not be a red flag. But it's still a red flag for them to conduct further due diligence.

The red flags the DEA have identified, those are not things that are discussed or debatable. They are actually standards of care in that highway.

BY MR. SWANSON:

Q But my question was a bit more basic. Can reasonable minds differ as to what constitutes a red flag?

MR. ELSNER: Objection.

A Out of the 16 red flags I have identified in my report, my answer is no, sir.

BY MR. SWANSON:

Q That reasonable minds could not differ? Those 16 red flags are required, no ifs, ands, or buts; is that your testimony?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. SWANSON:

Q If you look -- so you have on page 14, it identifies -- I don't know the number, but it identifies the red flags that the panel wanted to discuss, right?

A Yes, sir.

Q Then in section 4, there's a section that's called, "Other aberrant medication-related behaviors and factors potentially indicative of substance abuse or diversion," right?

A Yes, sir.

Q And again, it breaks out between physicians and pharmacists about what might constitute other aberrant behavior, right?

A Yes, sir.

Q On page 16, if you go to the section on

pharmacists, I want to ask you about that. Are you there?

A Yes, sir.

Q The second sentence in that paragraph reads: "While the above factors or "red flags" are more indicative of substance abuse or diversion, oftentimes, more subtle aberrant behaviors exist that, while in and of themselves may not be problematic, may indicate a potential issue that warrants further evaluation prior to dispensing."

Do you see that?

THE REPORTER: We've lost the witness.

MR. ELSNER: Sorry. We had a power surge.

THE VIDEOGRAPHER: We are going off the record at 9:20 a.m.

(A recess was taken.)

THE VIDEOGRAPHER: We're going back on the record at 9:21 a.m.

BY MR. SWANSON:

Q Mr. Catizone, I'm not sure where I cut out. So why don't I read my last question back and we'll start there, okay?

A Thank you.

Q Okay. I've directed you to page 16 of the stakeholders document, the section regarding

pharmacists, right?
A Page 15 is prescribers.
Q 16.
A Oh, 16, sorry. Okay.
MR. ELSNER: The second sentence under "Pharmacists."
BY MR. SWANSON:
Q Correct. It reads: "While the above factors or 'red flags' are more indicative of substance abuse or diversion, oftentimes more subtle aberrant behaviors exist that, while in and of themselves may not be problematic, may indicate a potential issue that warrants further evaluation prior to dispensing."
Did I read that correctly?
A Yes, sir.
Q And then it goes on to describe some of these -- what you and the stakeholders termed aberrant behaviors, right?
A The pharmacist stakeholders did, sir.
Q Well, so what's your responsibility for this document? I mean, is this something that you say, well, there are a bunch of stakeholders but they only take ownership for their specific sections?
MR. ELSNER: Objection.

A What happened, sir, was each group was asked to write their individual sections. So prescribers were asked as to what they viewed red flags, what the challenges they faced with patients, same with the pharmacists group. So the American Pharmacy Association, Walgreens, all the participants that were pharmacies and pharmacists put together this section.

My role was to ensure that there was nothing offensive in there that criticized or aggravated the other stakeholders. But this is what the pharmacy groups felt was happening in pharmacy practice in their interactions with prescribers that was important for prescribers to know.

BY MR. SWANSON:

Q But it's a document that you supported, right, you supported the stakeholders document in its final form, right?

A Yes, sir.

Q Okay. And if you objected to positions or language that was included in this stakeholder document, you didn't have to sign off on it, right? You could have said, I'm not going to be a party to this, you had that opportunity if you needed it, right?

A Yes, sir, I thought the question was whether or not

I agreed with this. And my role was not to agree with it. It was to make sure that the document met its purpose, which was open the lines of communication.

Q Okay. But in any event, you were -- it was acceptable to you that the document went out with you as a signatory, so to speak, and was published with your name on it, right?

A Yes, sir.

Q And the section on aberrant behaviors for pharmacists, it says: "Aberrant behaviors that patients may exhibit upon the presentation of the prescription include traveling unexplainable and/or unreasonably long distance to a physician office and/or the pharmacy, or requesting to pay cash for a controlled substance prescription when it has been documented that he or she has insurance that would normally cover the prescription."

Right?

A Yes, sir.

Q And in your view, those are -- at least your view in this case, in this litigation, is that -- those two behaviors, traveling long distances and paying cash, they are red flags that nobody could disagree with? They're just -- they're red flags, right?

A Yes, sir.
Q In the document that you signed off on, the stakeholders document said no, no, no, those aren't red flags, they are behaviors that might warrant suspicion, but they might have easily explainable answers, right?
MR. ELSNER: Objection.
A No, sir.
BY MR. SWANSON:
Q Well, it says: "Whereas, these types of behaviors may be warning signs, they can also be explained by today's specialty practice arena as well as third-party payor reimbursement circumstances." Right?
A That's what it says.
Q Okay. And this wasn't something that you objected to such that you refused to put your name on this document, right?
A What the document -- what it says, that I signed off on, sir, was that these may be aberrant behaviors as well as red flags. But the document also says that both types of situations result in diversion. And also if you read in there, an important point that you and I have been discussing all morning, it says "whereas, documented." That

once again is the importance of documentation that is documented if a person has insurance, the documentation about that patient decides whether or not the red flag that's been identified is legitimate or not.

So documentation is critical to this entire process, as the document was constructed, my interpretation and my sign-off of that document, sir.

Q Well, sir, respectfully, what it says is, when it has been documented that he or she has insurance. That's the documentation it's talking about, right?

MR. ELSNER: Objection.

A No, the documentation included the prescription process which would include that as part of the process. I was there for the document, sir, and that was how it was presented and understood.

BY MR. SWANSON:

Q Okay. Well, what it says, all right, so the people who weren't there who were just getting this out in the public, it says: "Requesting to pay cash for a controlled substance prescription when it has been documented that he or she has insurance, that would normally cover the prescription." That's what the document reads, correct, "yes" or "no"?

MR. ELSNER: Objection.

A Yes. Pharmacists would know what that means.

BY MR. SWANSON:

Q Yes. And you don't claim that any of the defendants in this case didn't document whether the patient who came in had insurance or not? That's not a claim you're making, is it?

MR. ELSNER: Objection.

A I'm not understanding the question. I'm sorry, sir.

BY MR. SWANSON:

Q You're not saying that the retail pharmacies in this case didn't have documentation about whether the patient had insurance, right?

A I'm claiming that the defendants in this case should have documented the prescription process which included whether they had insurance coverage or not.

Q Now, I was going to ask you whether it said anywhere in this document that the pharmacist was required to document resolution of red flags. And I thought you were going to say no, but I guess because the word document has appeared in that paragraph, you're going to say that this document does say that pharmacists must document resolution

of red flags; is that right?
A Yes, sir.
Q Okay. So if I asked you the question, where in this document does it tell me and tell pharmacists that they're required to document the resolution of red flags, you would point me to that sentence that I just read?
MR. ELSNER: Objection.
A I would point you to that paragraph, sir, which says, here is a behavior. It is a red flag. It could also be an aberrant behavior, and here's the resolution of that behavior by a pharmacist, which was determining whether or not distance was a probable explanation and that was documented.
So that paragraph in its entirety and as part of the document is exactly the basis for the requirement for documentation, sir.
BY MR. SWANSON:
Q Got it.
Okay. I'm about done. I'd like you to turn to page 4 of your report.
A Yes, sir.
Q Okay. Page 4 is a continuation of the summary of your opinions in this case, right?
A Yes, sir.

Q And I want to ask you about the last bullet, the last summary opinion that you provide here.

You say that: "The defendants failed to provide their pharmacists with data, information, and the tools necessary to assist their pharmacists in fulfilling their corresponding responsibility, duties, including but not limited to, utilizing dispensing data to identify patterns, trends, and practitioners possibly involved in diversion, as well, to recognize and resolve red flags."

Do you see that?

A Yes, sir.

Q Is it your opinion in this case that pharmacists cannot fill their corresponding responsibility without the systems that you claim the retail chain pharmacy should have implemented?

A Those systems are needed to assist the pharmacists, sir.

Q Well, my question was different.

Is it your opinion that pharmacists cannot fulfill their corresponding responsibility without the systems that you claim the retail chains should have implemented?

MR. ELSNER: Objection.

A If pharmacists do not have the access to

information about the patient prescriber they need to fill that prescription, my answer is yes.

BY MR. SWANSON:

Q Okay. But I want to be clear on this, because you say that there were very specific systems that had to be implemented by the retail chain pharmacies and specific ways to use the dispensing data. That's your opinion, right?

MR. ELSNER: Objection.

A I refer to them as tools, sir, not -- and I didn't specify what they should be. But they should be tools available to the pharmacists.

BY MR. SWANSON:

Q And in your opinion, those tools include -- necessarily must include using dispensing data making the dispensing data available to the pharmacist to detect possible patterns of diversion, that's your opinion, right?

A Yes, sir.

Q So my question is, is it your opinion that pharmacists cannot fulfill their corresponding responsibility without that tool, that specific tool, that you claim the retail chains should have implemented?

MR. ELSNER: Objection.

A Yes, sir. As an individual pharmacist, they have the dispensing data available to them to make that decision. In a corporation like Walgreens, that dispensing data rests with the corporation. And if the corporation doesn't provide that data to the pharmacist, the pharmacist doesn't have the complete information to make that decision.

MR. SWANSON: Okay. Move to strike as nonresponsive.

MR. ELSNER: Objection.

BY MR. SWANSON:

Q Is it your opinion that pharmacists cannot fulfill their corresponding responsibility without the specific tool that you just discussed that you claim the retail chain pharmacies should have implemented?

MR. ELSNER: Objection; asked and answered.

A Without dispensing data on controlled substances and red flags, my answer is yes, sir.

BY MR. SWANSON:

Q And you've identified of all the pharmacies in the country, one pharmacy that has -- that you say has such a system, right?

A No, sir.

MR. ELSNER: Objection.

BY MR. SWANSON:

Q What other pharmacies other than Albertsons have you identified?

MR. ELSNER: Objection.

A You asked me to give one example. I gave you one example, and then said I could not identify other individual pharmacies without being able to go through and question and look at all the different pharmacy systems. So my answer is -- my answer was, there were more pharmacies, but I could not identify those beyond Albertsons.

BY MR. SWANSON:

Q The second sentence, you say: "The subsequent result of the failure to provide such data, information, and tools was the diversion of significant quantities of controlled substances, particularly opioids, outside of the closed distribution and dispensing system for controlled substances."

Right?

A Yes, sir.

Q Now, in your report, you've identified, and we've talked a lot about 16 different red flags, right?

A Yes, sir.

Q And those red flags have been run by Dr. McCann

across some subset of each pharmacy's dispensing data, right?

A Yes, sir.

Q And the result is that in your report, you've identified, for each red flag, a certain number of prescriptions, right?

A Dr. McCann identified, sir.

Q Okay. And then you put those into your report, right?

A Yes, sir.

Q So if you turn, please, to page 33, I just want to ask you about one of these and then we'll finish up.

A I'm there, sir.

Q Okay. On page 33, I want to look at your red flag Number 2, okay?

A "Prescriber Distance," sir?

Q Yes. So there, you've said it's a red flag if a patient traveled more than 25 miles to visit their prescriber, right?

A Yes, sir.

Q For Walgreens, you identified 37,066 prescriptions that fit that red flag in some subset of dispensing data between 2006 and 2020, right?

A Again, just to clarify, Dr. McCann identified those

prescriptions. That was included in my report, yes.

Q And to be clear here, you did not look at any individual prescription in that set, 37,066 prescriptions, to test your opinion as to whether that was actually -- any one was actually a suspicious prescription, right?

A Correct, sir.

Q So you can't tell me that any of the doctors who wrote any one of those 37,066 prescriptions, right?

MR. ELSNER: Objection.

A I'm sorry, sir. I didn't understand what the question was.

BY MR. SWANSON:

Q You can't identify any doctor who wrote any of those 37,066 prescriptions, right?

MR. ELSNER: Objection.

A Correct, sir.

BY MR. SWANSON:

Q But those 37,066 prescriptions, they might have been written oncologists at the Cleveland Clinic. You just don't know one way or the other, right?

MR. ELSNER: Objection.

A I did not review the individual prescriptions, just aggregate data, sir.

BY MR. SWANSON:
Q And because you didn't look at any individual prescription, you can't say if any diligence was conducted on any of those prescriptions, right? You just don't know?
MR. ELSNER: Objection.
A Partially, sir. If the documentation was included on patient notes, I would have been able to determine that without seeing the individual prescription, but I didn't have that information available either.
BY MR. SWANSON:
Q But you didn't look at any prescriptions? So you can't say whether a red flag was cleared or wasn't cleared by the pharmacist, right? Again, you just don't know because you're relying on aggregate data, right?
MR. ELSNER: Objection. Objection; mischaracterizes his testimony.
A We used the aggregate data. What was missing for me to substantiate that was the documentation in notes that the pharmacist should have included to resolve that red flag.
BY MR. SWANSON:
Q Okay. Whether it was missing or not, you just

don't know one way or the other whether a pharmacist cleared and documented any of those 37,066 prescriptions, right? You just don't know?

MR. ELSNER: Objection.

A Correct.

BY MR. SWANSON:

Q And you can't say -- because of that, you can't say whether any of those 37,066 prescriptions were written for an illegitimate reason, right?

A No, sir.

Q Well, if you didn't look at the prescription, and you don't know who the doctor was writing it, and you don't know the circumstances of the prescription, how can you say that any one of those 37,066 prescriptions was written for an illegitimate reason?

MR. ELSNER: Objection.

A Based on information I provided earlier. Based on the amount of opioids that were dispensed in those two counties. Based upon the amount of deaths per hundred thousand people in those two counties. And based on the fact that still 37,000 prescriptions tagged for that red flag indicates to me from an aggregate data and overall view that diversion occurred and diversion occurred at a significant

level; even though I can't identify which specific prescriptions were diverted.

BY MR. SWANSON:

Q Okay. You can't tell me what individual prescriptions were, in your view, illegitimate. What percentage of those 37,066 prescriptions were written for an illegitimate reason?

MR. ELSNER: Objection.

A The best way I can qualify that and give you an answer, sir, is a significant number based upon the total of opioids that were dispensed and based on the resulting deaths in overdoses. Beyond that, I can't give you anything more than "significant" and I can't qualify it beyond "significant."

BY MR. SWANSON:

Q So you can't tell me if it's 10 percent or 20 percent or 30 percent, you can't tell me that, can you, sir?

A I can if you provide the documentation that whether or not those red flags were resolved. That would allow me to give you the percentage versus the aggregate totals, the deaths, and the supply of opioids in those two counties.

Q But I have you in front of me today for questioning. So sitting there in your chair today,

you can't tell me what percentage of those 37,066 prescriptions you claimed were written for an illegitimate reason, true?

MR. ELSNER: Objection.

A My answer is significant and significant would be far greater than 10, 20, or 30 percent. Probably more in the range of between 70 and 80 or 90 percent, sir.

BY MR. SWANSON:

Q Oh, so your opinion -- your opinion is that 70 to 90 percent of those 37,066 prescriptions were written for an illegitimate reason?

A No, sir. You asked me to define just sitting in the chair today what I thought would be a significant number. And to me, a significant number is somewhere to 70, 80 percent. Again, lacking the documentation, I cannot quantify whether or not those 37,000 prescriptions fell into that category. But if you ask me what's the difference between significant and others, for me a significant number of prescriptions would be 70, 80 percent if I could make that determination, sir.

Q So a significant quantity of controlled substances at 70 to 80 percent to you?

MR. ELSNER: Objection.

A A significant number versus not a significant number, sir.

BY MR. SWANSON:

Q Okay. 70 to 80 percent is what you qualify as significant?

A Yes, sir.

MR. ELSNER: Objection.

BY MR. SWANSON:

Q So let's turn back to page 4. I want to read the second sentence of your opinion again.

"The subsequent result of the failure to provide such data, information, and tools was a diversion of significant quantities of controlled substances particularly opioids, outside of the closed distribution and dispensing system for controlled substances." Right?

A Yes, sir.

Q So if I understand your testimony, it is your view that 70 to 90 percent of the medications that were dispensed by the retail chain pharmacies were diverted outside of the closed distribution and dispensing system for controlled substances?

MR. ELSNER: Objection.

BY MR. SWANSON:

Q Right?

A No, sir.
Q Okay. Where is my disconnect there?
A The disconnect is, I've said that a significant number of prescriptions were diverted outside of the system. But absent patient notes and other documentation, I couldn't qualify or quantify what significant meant. And defining significant as a general term, that term for me means between 70 and 90 percent. If I had the documentation, I would be able then to make a determination beyond how many patients died in Lake and Trumbull County, and how many opiates were distributed per person in opiate [sic] county that, to me, supports "significant" and would help me quantify that beyond just the term "significant."
Q Sitting here today, can you do anything other than speculate as to what percentage of the 37,066 prescriptions that hit on flag 2 for Walgreens were for an illegitimate medical purpose?
MR. ELSNER: Objection.
A Again, it's not a speculation, sir. It's based on the data, the number of opioids that were distributed in those counties, the number of overdoses and deaths indicate to me factually that there was a significant diversion of prescriptions.

BY MR. SWANSON:

Q And again, significant to you is 70 to 80 percent?

MR. ELSNER: Objection.

A As a general term, sir, yes.

BY MR. SWANSON:

Q I don't want to go through it all, but would your same answer apply if I asked you about any one of these numbers that you've included for any of the retail chain pharmacies in the red flag analysis?

MR. ELSNER: Objection.

A Significant in all of those cases, yes, sir.

MR. SWANSON: I appreciate your answering my questions. I think I'm short on time so I'm going to pass you off to one of my colleagues.

THE WITNESS: Thank you, sir.

MR. SWANSON: Thank you.

CROSS-EXAMINATION

QUESTIONS BY JOHN GISLESON:

Q Good morning, Mr. Catizone. My name is John Gisleson and I represent Rite Aid.

Have you been to either Lake County or Trumbull County?

A No, sir.

Q Do you know how many stores, pharmacy stores Rite Aid has in Lake County?

MR. ELSNER: Objection.

A I think approximately four or five, sir, but I'm not certain.

BY MR. GISLESON:

Q Do you know how many stores any of the other pharmacy defendants have in Lake County?

MR. ELSNER: Objection.

A Again, I've looked at that data, and I think they vary between three and five for the other defendants, Giant Eagle has the smallest number of pharmacies within those counties, sir.

BY MR. GISLESON:

Q Same questions for Trumbull County. Do you know how many pharmacy stores each of the chain defendants have in Trumbull County?

MR. ELSNER: Objection.

A I believe it's relatively the same proportion, sir, somewhere between three and five for the larger chains, and then maybe one or two for Giant Eagle.

BY MR. GISLESON:

Q As part of your investigation in this case, did you seek to determine what the specific geographic area serviced by each store in each county was?

A No, sir.

Q Would you expect the geographic area serviced by

each pharmacy store in Lake and Trumbull County to vary?

MR. ELSNER: Objection.

A If you could help me understand what you mean by "vary," sir.

BY MR. GISLESON:

Q Sure. Would you expect that some stores -- strike that.

Would you expect that some pharmacy stores in Lake and Trumbull Counties service a larger geographic area, whereas others might service a smaller geographic area?

A Yes, sir.

Q Did you do anything to investigate the specific geographic area serviced by each pharmacy store in Lake and Trumbull Counties?

MR. ELSNER: Objection.

A No, sir.

BY MR. GISLESON:

Q Did you do anything as part of your investigation in this case to determine how many patients were serviced by each chain pharmacy store in Lake and Trumbull County?

MR. ELSNER: Objection.

A No, sir.

BY MR. GISLESON:

Q Would you expect that some chain pharmacy stores in Lake and Trumbull County have more patients than other stores?

A Yes, sir.

Q Did you do anything to evaluate the demographics of the patients served by each chain pharmacy store in Lake and Trumbull County?

A No, sir.

Q Do you agree that the patient demographics may vary from store to store, depending on the local community?

A I would agree the demographics would vary, but the opioid epidemic cuts across all demographic factors and affects equal -- the populations equally. So yes and no, sir.

Q As part of your analysis in this case, did you do a specific investigation of the dispensing practices of any particular pharmacy?

MR. ELSNER: Objection.

A Again, Mr. Gisleson, by dispensing practices, can you just help me understand what you mean by that?

BY MR. GISLESON:

Q Sure.

Did you evaluate the percentage of controlled

versus noncontrolled prescriptions dispensed by a particular pharmacy store in Lake or Trumbull County?

MR. ELSNER: Objection.

A No, sir.

BY MR. GISLESON:

Q Did you evaluate the prescribing -- strike that.

Did you evaluate the dispensing practices of any particular pharmacist in either Lake or Trumbull County?

A No, sir.

Q Did you review any patient medical records for any of the prescriptions that you flagged?

A No, sir.

Q Did you speak with any pharmacists in Ohio who worked for one of the chain pharmacy defendants?

A No, sir, but I read the depositions of the pharmacists who practiced in Ohio and supervised pharmacists in Ohio.

Q Did you speak with anyone from the Ohio board of pharmacy concerning dispensing practices in Lake or Trumbull County as part of the work you did in this case?

A No, sir.

Q During the time that you were preparing your report

in this case, did you know who ran the day-to-day operations of the Ohio board of pharmacy?

A Yes, sir.

Q What's the name of that individual?

A What division, sir? Steve Schierholt is the executive director and oversees the entire board.

The compliance officer, is that who you were asking about, sir?

Q Either.

Did you speak with either Mr. Schierholt or the compliance officer for the Ohio Board of Pharmacy as part of your work in this case?

A No, sir.

Q Did you request from the Ohio board of pharmacy any information as to the guidance the Ohio Board of Pharmacy provided to chain pharmacy stores in Ohio?

A No, sir.

Q Did you do any investigation as to the continuing education courses that were taken by the pharmacists who worked for the chain pharmacy defendants?

A No, sir.

Q What was the continuing education requirement for pharmacists in Ohio between 2006 and 2020?

MR. ELSNER: Objection.

A That information is contained in NABP Survey of Pharmacy Law, which I did not access but I could access if needed.

BY MR. GISLESON:

Q Can you describe what the Survey of Pharmacy Law is?

MR. ELSNER: Objection.

A Survey of Pharmacy Law is a compilation of state laws that the executive directors of the state boards of pharmacy put together. Included in that section is the continuing education requirements of each individual states, and I do believe that Ohio requires some continuing education in pharmacy law, besides live and via workbook or webinar CE.

BY MR. GISLESON:

Q When you say compilation of state laws, how are those laws compiled in that survey?

A There are a series of charts that specify certain parts of the law or certain laws, and the state board executive director fills that out. So for example, it would say, "is a license required for a pharmacy in your state?" And the executive director would check yes or no. That type of compilation, sir.

Q Does the Survey of Pharmacy Law address the

requirements of the Controlled Substances Act?
A Some of those, sir, yes.
Q As part of your responsibilities as the executive director for the NABP, did you review the Survey of Pharmacy Law before it was issued?
A Yes, sir.
Q And did you approve the Survey of Pharmacy Law before it was issued?
MR. ELSNER: Objection.
A I did not approve the individual state content because that would be up to the states to determine if that was correct. I approved the format of that publication when it was released.
BY MR. GISLESON:
Q What was the frequency with which the Survey of Pharmacy Law was released by the NABP?
A It's updated annually, sir.
Q To whom did the NABP provide that survey of law?
A It's provided to all the state boards of pharmacy, all of the 140 colleges of pharmacy and it's provided to students as well, graduating students, and then any pharmacy, pharmacist, corporation, or individual that wants to purchase a copy is able to do so.
Q So that if any pharmacist is interested in knowing

what Ohio law requires of a pharmacist in connection with dispensing controlled substances, it would be appropriate for that pharmacist to read the Survey of Pharmacy Law for Ohio?

A No.

Q Why not?

A What the pharmacist would have to read and be responsible for is the Ohio practice and rules. Ohio also has a requirement that pharmacists must maintain a written copy of the Ohio newsletter and the Ohio newsletter includes updates and information on laws in Ohio.

The Survey of Pharmacy Law would be a nice handy guide for pharmacists to better understand or easily access questions they may have about the law in Ohio.

Q Did the Survey of Pharmacy Law at any point between 2006 and 2020 specifically state for Ohio that pharmacy law requires a pharmacist to document the resolution of red flags?

MR. ELSNER: Objection.

A I don't recall that specific section, sir, in the Survey of Pharmacy Law.

BY MR. GISLESON:

Q Can you identify any newsletter issued by the board

of Ohio that specifically stated that a pharmacist must document the resolution of red flags?

A I can't specifically, but I do remember that, as the executive editor and reviewing content at the states, that the Ohio Board of Pharmacy did issue newsletters that talks about the responsibility of the pharmacist as well as the pharmacy and did talk about red flags particularly after the Volkman decision in Ohio. I know there were newsletters from Ohio that talked about that. They talked about resolving and documenting red flags, sir.

Q If I want to get a complete set of the newsletters that were issued by the Ohio Board of Pharmacy to pharmacists and pharmacies in Ohio, how can I obtain that documentation?

MR. ELSNER: Objection.

A I think you --

BY MR. GISLESON:

Q I'll rephrase the question.

Do you know whether there was anybody in Ohio that compiles the newsletters that are issued by the Ohio Board of Pharmacy to pharmacists?

A Just as basic information? The source of that would be the Ohio Board of Pharmacy, but I'm not sure what their record retention policy is in

accordance with state or administrative practice laws. So they would be the primary source for you to request that, sir.

Q You say in your report that: "Pharmacists have been trained when determining whether to fill a prescription for a controlled substance to be alert for suspicious activity surrounding the prescription. Licensed or registered pharmacists in every state are required to complete a formal education program of didactic and practical experience."

Did that include how to resolve red flags in controlled substance prescriptions?

A If I could ask you to direct me to the page you're reading that from, sir, so I can make sure I understand and am reading it correctly, please.

Q Page 28.

A Thank you. Okay. I'm there, sir.

Could you repeat the question, please?

Q Sure.

You wrote that: "Pharmacists have been trained when determining whether to fill a prescription for a controlled substance to be alert for suspicious activities surrounding the prescription. Licensed or registered pharmacists

in every state are required to complete a formal education program of didactic and practical experience."

That applies before they receive their license; is that correct?

A Yes, sir.

Q And if you and the NABP is doing its job, it appropriately tests pharmacists on the licensure examination to make sure that those pharmacists seeking to become licensed know how to appropriately resolve red flags for a controlled substance prescription, correct?

MR. ELSNER: Objection.

A That's one of the competencies in the overall state Rx exams, sir, yes.

BY MR. GISLESON:

Q And that's a serious competency that the NABP wants to ensure a pharmacist knows how to perform, right?

A If I can clarify, it's not NABP because the state law exam is developed and the content of that exam is selected by Ohio. It's the Ohio Board of Pharmacy or that board determination that that's critical and that the pharmacist should know that.

NABP simply facilitates that process by creating the exam and administering the exam for

the state.
Q And throughout the time that you were the executive director for the NABP, you communicated with the Ohio Board of Pharmacy, correct?
A Yes, sir.
Q And was it your understanding, based on your communications with the Ohio Board of Pharmacy, that the Ohio Board of Pharmacy believed it was critical that pharmacists know how to perform a review of a controlled substance prescription?
MR. ELSNER: Objection.
A Based on my conversations with executive director Bill Winsley and its investigators, particularly after the Volkman case, and what they found there and what they found with the pharmacies and the prescribers there, I could say yes, that was a serious concern of Bill Winsley of the Ohio Board of Pharmacy at the time, sir.
BY MR. GISLESON:
Q And the Ohio Board of Pharmacy to your knowledge, therefore, took appropriate steps to make sure that pharmacists in Ohio were appropriately trained as part of their licensure in the resolution of red flags for controlled substances?
MR. ELSNER: Objection.

A The Ohio Board of Pharmacy took all the steps they could to provide that information to pharmacists and indicate to them that this was a responsibility they needed to meet. Ohio Board of Pharmacy also provided some educational programs, PowerPoints, but the training goes -- is just -- I'm interpreting training to mean something hands-on and very different than what the Ohio board is charged to do, sir.

BY MR. GISLESON:

Q Pharmacists create relationships with patients, true?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. GISLESON:

Q Do you believe that the pharmacist who worked for the chain pharmacies in Lake and Trumbull County sought to create relationships with their patients?

MR. ELSNER: Objection.

A I have no idea how to answer that question, sir, because I'm not familiar with the pharmacists or the patients.

BY MR. GISLESON:

Q In evaluating whether a prescription for a controlled substance was issued for a legitimate

medical purpose, is it appropriate for the pharmacist to take into consideration whether the pharmacist has a preexisting relationship with a patient?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. GISLESON:

Q So for example, would you expect, based on your experience as pharmacist as well as the executive director of the National Boards of Pharmacies, that a pharmacist may develop over time an understanding of the health conditions that led to a particular patient taking prescription opioid medications?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. GISLESON:

Q Did you investigate as part of the work you did in this case the extent to which any of the chain pharmacy pharmacists had an existing relationship for any of the patients for whom you have identified a flagged prescription?

A No, sir.

Q Do you have any understanding how many patients with flagged prescriptions were existing patients known to the pharmacists?

A No, sir, but that information should have been documented and included in the patient record. And I didn't have access to that information, sir.

Q What patient record?

MR. ELSNER: Objection.

A The patient profile or documentation, so that no pharmacist I'm aware of works 24 hours a day, seven days a week, so if there are other pharmacists in the pharmacy that didn't have that relationship with the patient, and didn't know that patient history, documentation in that patient profile, or with that prescription, would help that pharmacist understand and realize those red flags had been resolved, sir.

BY MR. GISLESON:

Q Between 2006 and the present, were pharmacies required to maintain a patient profile for every patient that was being served by the pharmacy?

MR. ELSNER: Objection.

A The dispensing systems that the states required required that there be patient records and whether that was an actual patient profile or some other documentation, the pharmacies were required to document that information and maintain that information.

BY MR. GISLESON:
Q What was the information in Rite Aid's patient profile by category?
MR. ELSNER: Objection.
A I don't know, sir. I didn't have access to that information.
BY MR. GISLESON:
Q Did you request access to Rite Aid's patient profile for the flagged prescriptions from the plaintiff's lawyers?
MR. ELSNER: Objection.
A I didn't request the profile. I understand there's a request that's been made for the patient notes of the defendants, but I am not sure what the status of that is.
BY MR. GISLESON:
Q Did you review the patient profiles for any of the flagged prescriptions for any of the chain pharmacies in this case?
MR. ELSNER: Objection.
A No, sir.
BY MR. GISLESON:
Q Is it appropriate, in your view, for a pharmacist to review a patient profile maintained by the pharmacy in evaluating whether to fill a

prescription for opioid medications?
A Yes, sir.
Q Does a patient profile contain information relating to a drug utilization review?
MR. ELSNER: Objection.
A It should, sir. I can't comment as to whether each patient's profile contains that information, but it should, sir.
BY MR. GISLESON:
Q How many of the pharmacists who fill prescriptions on your flagged prescription list, did you report to the Ohio Board of Pharmacy for violating their corresponding responsibility?
MR. ELSNER: Objection.
A I think if we go back to your earlier questions and my responses, sir, I did not look at individual prescriptions, so I did not have access to who the individual pharmacist or prescribers were in each of those cases.
BY MR. GISLESON:
Q So none of the dispensing data you had identified the pharmacist who filled a prescription?
MR. ELSNER: Objection.
A Not personally identifiable information, sir. There may have been initials, but the information I

looked at did not identify the pharmacist.

BY MR. GISLESON:

Q Did you report to anyone with the Ohio Board of Pharmacy, that in your view, a large number of pharmacists at CVS, Rite Aid, Walgreens, Walmart, and Giant Eagle violated their corresponding responsibility based on your review of aggregate data?

MR. ELSNER: Objection.

A Knowing the workings of the state boards of pharmacy, sir, the answer is no, because I'm not sure whether or not the Ohio Board of Pharmacy took action against these pharmacists or has them under investigation. And I defer to the Ohio Board of Pharmacy.

If I'm presented with information to that extent, then it would be my responsibility to report those pharmacists and those companies to the Ohio Board of Pharmacy.

BY MR. GISLESON:

Q The Ohio Board of Pharmacy does inspections of pharmacies in Lake and Trumbull County, correct?

A Yes, sir.

Q And they have the ability as part of those inspections to look at a pharmacy's dispensing

system, correct?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. GISLESON:

Q In fact, isn't it true that the Ohio Board of Pharmacy must approve any dispensing system used by a pharmacy in Ohio?

MR. ELSNER: Objection.

A I believe that was a requirement at one time. I'm not sure if it still is, but yes, sir.

BY MR. GISLESON:

Q As part of your role as executive director of the NABP, did the NABP at any time ever instruct the Ohio Board of Pharmacy or advise the Ohio Board of Pharmacy that it should review a pharmacy's dispensing system to determine whether it analyzes data to identify patterns of diversion?

MR. ELSNER: Objection.

A We're talking about different systems here, sir. So if I can clarify, in a pharmacy, there are numerous systems that the pharmacist has available. There's a dispensing system that may focus on processing a prescription and adjudicating the claim. And then there's a DUR process, patient profile process, and other patient information.

NABP did instruct the Ohio Board of Pharmacy through the model practice act as to what those requirements should be in total. And then as we went through with the prior attorney, what the automated systems needed to document, but did not say it had to be specific to dispensing, but it had to be available, readily available to the pharmacists to make a determination on each individual prescription, sir.

BY MR. GISLESON:

Q Is there an average in the pharmacy industry for how long a pharmacist should take to fill a controlled substance prescription?

A Not that I'm aware of, sir.

Q Is there an average in Ohio for how long it should take a pharmacist to fill a controlled substance prescription?

MR. ELSNER: Objection.

A Not that I'm aware of, sir.

BY MR. GISLESON:

Q Have you ever analyzed as part of your work in this case, how long a pharmacist working for one of the chain pharmacies should take to evaluate a prescription for a controlled substance to determine whether it has a legitimate medical

purpose?

MR. ELSNER: Objection.

A The analysis that I've done is that depending upon each prescription, that time could vary, just like other medications, if it's a complicated situation, it could take longer than less than a situation that may not be as complicated.

BY MR. GISLESON:

Q I understand that you take issue with the chain pharmacies' policies that they had. Did you do anything to investigate the knowledge that any of the pharmacists for the chain pharmacies had that was independent of any policies or training that they received from the chain pharmacies?

MR. ELSNER: Objection.

A Again, Mr. Gisleson, I'm having a little trouble understanding the question.

Can you rephrase it or help me so I can better answer it?

BY MR. GISLESON:

Q Sure.

Did you make any effort to determine what information or knowledge the pharmacists who worked for the chain pharmacies in Lake and Trumbull County had about evaluating controlled substance

prescriptions that was separate and apart from any information they learned from the chain pharmacies?

MR. ELSNER: Objection.

A No, sir.

BY MR. GISLESON:

Q Did you review Rite Aid's computer-based training they provided to pharmacists?

A If it was included in the policies and procedures, then the answer was yes, sir.

Q All of it?

A Again, I reviewed all the policies and procedures that were provided to me for Rite Aid.

Q Can you identify any pharmacist in either Lake Trumbull County who filled a prescription for an opioid medication with actual knowledge that the prescription lacked a legitimate medical purpose?

A I can answer that any pharmacist that filled a prescription that had an unresolved red flag knowingly and willfully filled that prescription and had knowledge that it was not for a legitimate medical purpose until it was resolved, and that knowingly and willingly, that has been a guidance issued by the DEA and is says that ignorance or not knowing does not negate the fact that the pharmacist should have known that that was a red

flag and should have been resolved.
Q And the only basis you have for identifying whether a pharmacist knowingly and willfully filled a prescription with an unresolved red flag is that you have not seen any documentation showing that the red flag or red flags were resolved; is that right?
A No, sir.
MR. ELSNER: Objection.
A The other two data points are the significant number of prescription opioids that were distributed in Lake and Trumbull County and the number of opioid and prescription drug overdoses in those two counties that point to the fact that there was significant number of prescriptions written for nonlegitimate purposes.
BY MR. GISLESON:
Q For the overdoses in Lake and Trumbull County, did you do any investigation to determine whether the individuals who overdosed obtained those prescription medications from one of the chain pharmacies in this case?
A Not specifically, sir.
Q Even generally? Do you have any evidence that even a single person who overdosed in Lake and Trumbull

County obtained the prescription opioid medication from one of the chain pharmacies in this case?

MR. ELSNER: Objection.

A Not specific to a person, but again, the data indicate that with that many prescriptions that the chains were distributing and if the -- in the chains, the industry numbers say dispensed 70 to 80 percent of all prescriptions, that would indicate to me that at least one person or more received a prescription from a chain pharmacy in those two counties.

BY MR. GISLESON:

Q So that's an inference that you are drawing, correct?

A It's an inference based on hard data that the industry is well aware of and has been tested and analyzed as well.

Q Now, you also reference a significant number of opioid medications that were dispensed in Lake and Trumbull County. Did you do any investigation as part of your work in this case what an appropriate and reasonable quantity of opioid medications was to be dispensed and consumed in Lake and Trumbull Counties?

MR. ELSNER: Objection.

A Yes. Based upon the quantities of medication that were identified as excessive, what would be an appropriate amount of prescriptions in those two counties would be what the recommended doses would be for a legitimate medical condition, but I did not have that information, sir, because I didn't have documentation to determine how many of those prescriptions actually the red flags were resolved.

BY MR. GISLESON:

Q So you believe that the quantities of medication for pain that were dispensed were excessive, but you can't identify what, in your view, is not an excessive amount, or is an appropriate amount for Lake and Trumbull County?

MR. ELSNER: Objection.

A I could, sir, if I had the data that indicated to me which one of those prescriptions that were filled for an excessive amount of prescriptions were actually legitimate. That would allow me to calculate what that appropriate amount of opioids should be for those two counties for legitimate pain management medications.

BY MR. GISLESON:

Q You have not performed that work, correct?

MR. ELSNER: Objection.

A The data hasn't been made available to me, so I have not, sir.

BY MR. GISLESON:

Q Does the Ohio Board of Pharmacy to your knowledge analyze OARRS data to identify prescribers issuing prescriptions without a legitimate medical purpose?

MR. ELSNER: Objection.

A My understanding of the OARRS data, sir, is that the Ohio Board of Pharmacy analyzing red flags associated with prescribers and then sends the letters to those prescribers when they've identified problems or other red flags that OARRS has identified for those prescribers.

BY MR. GISLESON:

Q Did the NABP also instruct the Ohio Board of Pharmacy to send copies of those letters to the pharmacies who were filling prescriptions for those prescribers so they know that the Ohio Board of Pharmacy has a concern about specific opioid prescribers?

A NABP has no authority or control over the Ohio Board of Pharmacy and OARRS, so that decision would have been left to the Ohio board and how they thought best to manage the registrants and licensees in Ohio.

Q To your knowledge as a former executive director for NABP, did the Ohio Board of Pharmacy, in fact, notify any pharmacies in Lake and Trumbull County of prescribers for whom the board of pharmacy had concerns?
A I'm not aware of that information, sir.
Q Did you speak with any doctors in Lake or Trumbull Counties about prescribing practices in those counties?
A No, sir.
Q Did you do any investigation of what the medical standard of care was in those counties for prescribing opioid medications?
A No, sir, but I don't understand why the standard of care would be different in Lake and Cook County than the rest of the country, so I assume it would be the same standard of care, but I did not do an analysis of that, sir.
Q Are you aware, then, that throughout the country, including in Ohio, and specifically Lake and Trumbull County, there was an increase in prescribing of prescription opioids --
MR. ELSNER: Objection.
BY MR. GISLESON:
Q -- over time?

A Yes, sir.
Q Is it your view that prescribers exercise their own professional judgment in deciding whether or not to prescribe an opioid medication?
A It's my understanding, but it's also my understanding that prescribers engage in diversion as well.
Q Did you report any prescribers in this case to the Ohio board of medicine?
MR. ELSNER: Objection.
A Again, sir, I didn't have access to identifiable information, but if that information becomes available and it would be my responsibility to report those practitioners to the medical board.
BY MR. GISLESON:
Q Did the NABP at any point while you were executive director ever provide guidance to the Ohio Board of Pharmacy on when a pharmacy should entirely refuse to fill a particular prescriber's prescriptions for opioid medications?
A The guidance we talked about earlier with the model act and the ability of the pharmacist to exercise their independent judgment. And once that judgment was made such as not to fill prescriptions, that there be supporting data to affirm that and data

available to the pharmacist to make that decision the guidance was yes, in that regard.

Q How many prescribers in your view should Rite Aid have blocked from having their prescriptions filled at Rite Aid pharmacists in Lake and Trumbull Counties?

MR. ELSNER: Objection.

A Every prescriber that Rite Aid identified was issues prescriptions for nonlegitimate purpose based upon the data available to the corporation and the input from the pharmacist, every one of those prescribers should have been blocked by Rite Aid.

BY MR. GISLESON:

Q And it's your view -- strike that.

Is it your view that once a prescriber in Lake or Trumbull County issued one opioid medication prescription without a legitimate medical purpose, then that means that all of that prescriber's opioid prescriptions are invalid and illegitimate?

A No, sir.

Q Do you agree that a prescriber can write some prescriptions without a legitimate medical purpose, while at the same time writing other prescriptions that do have a legitimate medical purpose?

MR. ELSNER: Objection.

A I agree that that could occur, but it doesn't make any sense to me, sir. So why a physician or prescriber would want to write prescriptions for a nonlegitimate purpose jeopardize their license and jeopardize that patient's life. So yes, it can happen. But there's no logical speculation as to why it should happen.

BY MR. GISLESON:

Q Can you identify any prescriber in Lake or Trumbull County who intentionally issued opioid prescriptions knowing that they lacked a legitimate medical purpose?

MR. ELSNER: Objection.

A Again, absent the individual data, I cannot do that, sir.

BY MR. GISLESON:

Q Did you identify any guidance that the NABP issued to any state board of pharmacy identifying a formula or methodology to determine how many red flag prescriptions will result in diverted opioid medications?

MR. ELSNER: Objection.

A The only guidance that we provided, sir, was information from the DEA that said that the more

red flags a prescription has and based upon the individual red flag, then the potential or possibility of diversion is related to that and it could increase exponentially.

BY MR. GISLESON:

Q Are you aware of any formula or methodology used in the pharmacy industry or practice that allows a determination of the number of diverted prescriptions based on the number red flagged prescriptions?

A Yes, sir.

Q What's that?

A I can't remember the exact time, but there was an emergency room physician in Ohio that developed a program called NARxCHECK. NAPB purchased NARxCHECK, and what does NARxCHECK does, it looks at the red flags of a patient and prescriber, such as how many pharmacies that patient has visited, how many prescribers the MMEs of controlled substances, and generates a score for that patient very similar to what the score would be as a credit score.

And the higher the score, the more potential for diversion that would occur, and that program is available to any pharmacy and any pharmacist. And

in fact, the defendants -- some of the defendants in this case actually use NARxCHECK as an algorithm to help detect red flags and help detect diversion as well.

Q Any other formulas or methodologies you can identify?

A Not specifically beyond NARxCHECK, sir.

Q Did you do any investigation, whether pharmacies who the counties didn't sue, were filling prescriptions for opioid medications without a legitimate medical purpose?

A The scope of the lawsuit was outside of my expertise. I was simply asked to look at corresponding responsibility red flags. How the lawyers handled that and proceeded, I had no information, access, or input into that, sir.

Q Did you have any understanding as to how many opioid pills pharmacies other than the chain pharmacies in this case dispensed between 2006 and 2020?

MR. ELSNER: Objection.

A In Ohio or nationwide? The answer --

BY MR. GISLESON:

Q I'm sorry, Lake and Trumbull Counties.

MR. ELSNER: Objection.

A No, sir.

BY MR. GISLESON:

Q Do you know whether any opioid medications were illegally being sold in Lake and Trumbull Counties?

MR. ELSNER: Objection.

A My scope was to look at the red flags corresponding responsibility. I did not look at that factor, sir.

BY MR. GISLESON:

Q Now, you say the dispensing data should have been reviewed by each chain pharmacy to identify patterns of diversion. Did you identify patterns of diversion in this case based on your review of the aggregate dispensing data?

MR. ELSNER: Objection.

A I identified red flags that indicated the potential for diversion based on the aggregate data, sir.

Q Right. But you reviewed dispensing data. Based on your review of that dispensing data, did you identify any patterns of diversion?

MR. ELSNER: Objection.

A For the sample of dispensing data provided to me by each of the defendants, yes.

BY MR. GISLESON:

Q What was the pattern?

MR. ELSNER: Objection.

A There were different patterns that existed. They were patients that were receiving duplicative therapy or combinations. There were patients receiving the same medications, pattern prescribing. So in the limited sample, I was able to identify those red flags and those patterns.

BY MR. GISLESON:

Q So in your view, once a pharmacy identifies what it considers to be a pattern of diversion for a particular patient or a particular prescriber, the pharmacist then should refuse to fill a prescription presented by a patient?

MR. ELSNER: Objection.

A It's my opinion, sir, that once the pharmacist identifies a red flag and a pattern of red flags, it's the pharmacist's responsibility to resolve those red flags. If they cannot resolve those red flags, and they understand that diversion is occurring, then until that matter is addressed by either reporting that prescriber to the medical board and DEA, or alerting local authorities that the patient is diverting medications and having them investigate, then the pharmacist should not fill prescriptions from that prescriber, nor

dispense controlled substances to that patient.

BY MR. GISLESON:

Q And exercising a pharmacist's corresponding responsibility, is it your view that a pharmacist should refuse to fill a prescription solely because the pharmacy identified a potential pattern of diversion associated with either the patient or the prescriber?

A Until the pharmacist has resolved what those issues were for the red flags and is assured that the patient is not abusing or diverting those medications, which then goes outside of the system and kills people, until that's resolved, the answer is yes, sir.

Q Okay. So in your view, then, a pharmacist upon receiving information from the pharmacy about a potential pattern of diversion can include that information among the mix of facts and circumstances on which the pharmacist relies?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. GISLESON:

Q And in your view, depending on the pharmacist's exercised professional judgment, it still may be appropriate to fill that prescription for a

particular patient, true?
A In some cases, sir.
Q Yes?
A Yes, in some cases.
Q Do you believe that the DEA could identify patterns of diversion from OARRS data?
MR. ELSNER: Objection.
A I can't speak for the DEA, but I can tell you that I've identified patterns of diversion from the OARRS data and other PDMP programs.
BY MR. GISLESON:
Q You refer in your report to Rite Aid's 2009 settlement with the DEA. Did you actually read that DEA settlement agreement?
A Again, just so we're on the same page, is there a specific page in my report? I just want to make sure I'm understanding you correctly.
Q 55 to 56.
A Thank you, sir. Are you referring to the bottom of page 56, stepping into 2009?
Q That sounds right.
A Yes, sir, I did review that.
Q Okay. So that you knew and you know that that settlement agreement did not involve the State of Ohio, correct?

MR. ELSNER: Objection.

A I don't recall, but I would say until I have a chance to review that, I can't say definitively. I read it, reviewed it, but I can't recall all the facts, sir.

BY MR. GISLESON:

Q Do you know who Janet Hart is?

A Yes, I do, sir.

Q What role does she have at Rite Aid?

MR. ELSNER: Objection.

A I know that she's involved in compliance or operations and that she was one of the witnesses deposed in this matter.

BY MR. GISLESON:

Q Was she ever the -- did she ever -- strike that.

Did she ever have any -- strike that.

Did Janet Hart ever have a role in the Pennsylvania Board of Pharmacy?

A Yes, sir.

Q What was her role?

A As various times she served as member and at certain points she was actually president of the Pennsylvania board.

Q Did you ever discuss with her Rite Aid's practices for dispensing opioid pain medications?

A Yes.

MR. ELSNER: Objection.

BY MR. GISLESON:

Q Did you ever tell Janet Hart, whether in writing or orally in a conversation, that Rite Aid's pharmacists had to document the resolution of red flags for controlled substance prescriptions?

A As part of a conversation involving Rite Aid's practices, yes.

Q When?

A When Rite Aid was instructed by -- or taken to task by the boards of pharmacy for the red, white, or 15-minute rules that created significant controversy, and discussions with Janet Hart and others from Rite Aid, the whole question of how long it takes to fill a controlled substance, how the pharmacists were being unduly pressured to respond to those metrics, and how it was important that the pharmacist document those situations and have the time to document it was part of that discussion, sir.

Q Were those discussions in writing in any way?

A They were verbal, but I believe if you go back and check the minutes of the boards that took action against Rite Aid or raised a complaint, that Janet

Hart and others from Rite Aid spoke to that.

And I know for a fact that the boards of pharmacy raised those various issues in those public discussions and recorded meetings.

Q And the issue was the amount of time -- strike that.

The issue was any time guidelines or requirements for filling a prescription?

MR. ELSNER: Objection.

A There were several issues, corporate pressure on pharmacists to fill those prescriptions in an amount of time, not having enough time to perform the due diligence, not documenting what was occurring and pharmacists feeling that because of that, they were dispensing prescriptions they shouldn't dispense, but if they didn't dispense them, that they would be fired by the corporation.

BY MR. GISLESON:

Q Did you speak with any Rite Aid pharmacists to express the view that they might be fired if they didn't dispense a controlled substance?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. GISLESON:

Q Do you know the names?

A No, sir.
Q So you would expect Janet Hart, then, to know what guidance the NABP was providing to state boards of pharmacy concerning whether it was necessary to document the resolution of red flags?
A I would expect that Janet Hart, because she's a very knowledgeable person, would know in general what NABP's recommendations were. But she would be looking at Pennsylvania and incorporating NABP, but I would not expect her to have the same knowledge that I do or somebody that was a staff person or member of the board of directors of NABP to have, sir.
Q Did you at any point tell the Pennsylvania Board of Pharmacy that Janet Hart should not be on the board of pharmacy or its president?
A NABP would never do that, sir, and I would never do that personally, so the answer is no.
Q Do you believe that Janet Hart gave any instructions to Rite Aid pharmacists to fill prescriptions for opioid pain medications even if they lacked a legitimate medical purpose?
MR. ELSNER: Objection.
A I would have no way to answer that question, sir. I don't know what Janet Hart said to pharmacists

and Rite Aid, or what she would be instructed to say to pharmacists in her role.

BY MR. GISLESON:

Q Was there anyone else at Rite Aid with whom you had a discussion whether Rite Aid pharmacists had to document resolution of red flags?

A Former employee of Rite Aid, Michael Podgurski.

Q What position did he have?

A I believe he was at one time, Janet Hart's boss.

Q What was that discussion?

A Same discussion as with Janet Hart.

Q Anything different or in addition?

A I think there was pretty extensive discussion and pretty significant.

Q When did that discussion secure?

A Again, right after Rite Aid was taken to task by the state boards of pharmacy for its imposition of metrics to fill prescriptions in a certain amount of time, sir.

Q Did you do any analysis of Rite Aid's staffing at its pharmacies in Lake or Trumbull Counties?

A No, sir.

Q Did you do an analysis of staffing at any other chain pharmacy in Lake or Trumbull County to determine whether that staffing was adequate?

A No, sir.
Q Did you do any analysis for any chain pharmacy in this case to determine whether any time limits or time guarantees relating to filling opioid prescription medications interfered with their exercise of corresponding responsibility?
A I'm sorry. Did you say other pharmacies outside of Rite Aid?
Q Any pharmacies. Any of the chain pharmacies in this case. Did you do any analysis to determine whether any time limits or time guarantees relating to filling opioid medications interfered with their exercise of corresponding responsibility?
A The analysis was information that NABP and I received firsthand from pharmacists in those chains, information from the American Pharmacists Association, which is included in my report, and then the resolution passed by the members of NABP that asked NABP to look at the situation because of reports state boards of pharmacy were hearing that those metrics were interfering with the pharmacists' ability to conduct their due diligence.
Q Can you identify any prescription listed among your flagged prescriptions for which a pharmacist failed

to clear a red flag because that pharmacist was under time pressure?

MR. ELSNER: Objection.

A I can't identify individual prescriptions but, again, my report talks about the impact that had based on the aggregate data.

BY MR. GISLESON:

Q Is it true that when the Ohio Board of Pharmacy does an inspection of a pharmacy in Lake or Trumbull County, that one of the issues that's evaluated is staffing levels?

A I don't know if that's restricted to just Lake and Trumbull County, sir. I think it's a metric that they look at all pharmacies.

Q All pharmacies throughout Ohio?

A I believe so, sir.

Q Do you also understand that the Ohio Board of Pharmacy, when doing an inspection, also evaluates whether improper dispensing occurred?

A I'm not specifically aware, but believe that would be one of the tenets, again, that the board of pharmacy would look at.

Q Does the board of pharmacy also look at whether pharmacists for a particular pharmacy have access to OARRS to request reports when needed?

A I believe in 2011 and then in 2015, when OARRS became mandatory first for certain drugs, and then for certain drugs with red flags, and then for certain drugs identified by the board of pharmacy, since that was a mandate and a requirement that the Ohio Board of Pharmacy would have looked for that, sir.

Q When was the first time that NABP advised the Ohio Board of Pharmacy that it should be mandatory for pharmacists in Ohio to check OARRS with respect to every single prescription for opioid medications that are presented to the pharmacist?

MR. ELSNER: Objection.

A NABP made that recommendation to all states beyond Ohio that the PDMP should be utilized for all controlled substances prior to dispensing, and that prescribers should also be mandated to check the PDMP. And that might have been right at the beginning of PDMP's -- when they were first initiated, but I can't recall the specific dates, sir.

BY MR. GISLESON:

Q So was that sometime around 2011?

A Again, it was early on in the PDMPs. I'm not sure if it was 2010, 2011 or so.

Q Did Ohio follow the recommendation that the NABP made?
A I believe in 2011 they mandated it for prescriptions with red flags, and then I believe in 2015 they mandated it for all drugs designated by Ohio.
Q Were the pharmacies in Lake and Trumbull County and the rest of Ohio required to comply with the requirements of the Ohio Board of Pharmacy and Ohio law or with NABP's views as to how things should be?
MR. ELSNER: Objection.
A Of course, only Ohio law. NABP is not a government agency and has no authority over pharmacists, pharmacies, or state boards of pharmacy.
MR. GISLESON: Those are the questions I have. Thank you, Mr. Catizone. Josh?
THE WITNESS: Thank you, sir.
MR. KOBRIN: Let's go off the record real quick.
THE VIDEOGRAPHER: We are off the record at 10:32 a.m.
(A recess was taken.)
THE VIDEOGRAPHER: This is Media Number 3 in the deposition of Carmen Catizone. Today is

June 16th, 2021. We're going back on the record at 10:48 a.m.

CROSS-EXAMINATION

QUESTIONS BY JOSHUA KOBRIN:

Q Hi, Mr. Catizone. My name is Josh Kobrin, I represent Giant Eagle. We're going to primarily be looking at your May 19, 2021, supplemental report. I'll probably refer to that as just the report. Does that sound all right to you?

A Yes, sir.

Q Yesterday during your deposition with Mr. Bush, he asked you some questions about doctor shopping.

Do you remember that?

A Yes, sir.

Q And you talked about why you chose two or more prescribers as your metric for doctor shopping.

Do you remember that?

A Yes, sir.

Q And you said that was your decision to measure doctor shopping as overlapping days of supply written by two or more prescribers, correct?

A Yes, sir.

Q And I believe part of the reason for that decision was as you stated, quote/unquote, because patients generally use one physician; is that correct?

A The data indicated that, sir.
Q Did the data -- your reason for selecting that metric was the data indicated that patients generally use one physician?
MR. ELSNER: Objection.
A Yes.
BY MR. KOBRIN:
Q And your concern here, and this is kind of also from your report, as you explained in your report, is that: "A patient presenting a prescription for a controlled substance" -- and I'm reading from your report now on page 35 -- "may be obtaining the same or similar controlled substance from a different prescriber/prescribers, and the patient does not make the prescriber aware of the other prescriber."
Did I read that correctly?
A Yes, sir.
Q So given this concern, does the doctor shopping metric that you created for your report here, does it include -- or does it, rather, does it flag prescribers who work together in the same medical practice?
MR. ELSNER: Objection.
A If there's continuity of care and that is

documented as the red flag that that physician is covering for the other prescriber, then it would not be a red flag, but the documentation would verify that, sir.

BY MR. KOBRIN:

Q Yeah. I'm just wondering, your red flags here, the number of red flags here on page 35, does that include doctors who are working together in the same medical practice?

MR. ELSNER: Objection.

A That was the analysis done by Mr. McCann. I can't answer that, sir.

BY MR. KOBRIN:

Q Was that intended to include doctors who were working together in the same medical practice?

MR. ELSNER: Objection.

A Again, I did not run the numbers or the prescriptions, so I can't answer that, sir.

BY MR. KOBRIN:

Q You instructed Mr. McCann on how to identify these prescriptions, didn't you?

A I identified the red flags, sir, and asked him to run the numbers based upon the red flags.

Q And you wrote this, right? "The data reveals as follows regarding patient was dispensed opioid

prescriptions in overlapping days prescribed and were written by two or more prescribers."

A Yes, sir.

Q You wrote that, right?

A Yes, sir.

Q Is that intended to capture doctors who are working together in the same medical practice?

MR. ELSNER: Objection.

A It was intended to identify whether or not there were two different prescribers writing for that that would create duplicative therapy or therapy that was unknown to the other prescriber.

So if the best way to analyze the data was simply to include that, I don't know. That decision was Mr. McCann's decision.

BY MR. KOBRIN:

Q So you don't know one way or the other whether that includes doctors who where partnered in a medical practice together?

A Correct.

Q You don't know one way or the other whether that includes a physician prescribing for one patient and a physician's assistant also prescribing for the same patient in collaboration with the physician?

A I don't know that, but the way the red flag was set up, there would be no reason for those two to prescribe duplicative therapy that this would identify as well.

Q I think you talked about yesterday that there are situations in which a doctor or practice might change a therapy, you might have a therapy that's overlapping because, one is short-acting and one is long-acting but there are different situations where there might be, correct, duplicative therapies?

A Not so much duplicative, but change in therapy, and that change would be documented in the pharmacists notes and patient record.

Q Would those be flagged in this flag Number 2, doctor shopping in your report?

MR. ELSNER: Objection.

A Again, I can't answer that. I did not analyze the data, sir.

BY MR. KOBRIN:

Q So you just -- what did you tell Mr. McCann to do for this?

MR. ELSNER: Objection.

A I identified the red flags based upon my pharmacy knowledge and experience and asked Mr. McCann to

identify the prescriptions and total those prescriptions based upon the description I gave of those red flags.

BY MR. KOBRIN:

Q And for this red flag metric you just said, any two prescribers?

A It was the information --

MR. ELSNER: Objection.

A -- that's presented there in the report, sir, about different prescribers.

BY MR. KOBRIN:

Q That's what you gave him?

A Yes.

Q That one sentence, the data reveals as follows?

A Yes, sir.

Q Did you give him that in a written form?

MR. ELSNER: Objection.

A It was part of my draft report.

BY MR. KOBRIN:

Q So you gave him a draft report and then he gave you the numbers to fill in in the chart here?

MR. ELSNER: Objection.

A That was the first report.

BY MR. KOBRIN:

Q Is that correct?

A That was the first report, for that first report, that was one of the exhibits.
Q The document that you gave to Mr. McCann was one of the exhibits to the first report?
A No, no.
MR. ELSNER: Objection.
A The first report.
BY MR. KOBRIN:
Q Right. So before he gave you the numbers is what I'm talking about. Before you came out and you had served any report, what did you give to Mr. McCann?
MR. ELSNER: Objection.
A Mr. McCann received the draft report of what my red flags were and how I described those red flags, sir.
BY MR. KOBRIN:
Q Have you produced that draft report that you gave to Mr. McCann, Dr. McCann?
MR. ELSNER: Objection.
MR. KOBRIN: Have you produced that, Mike?
MR. ELSNER: That's actually not correct. He wasn't given a draft report. He was given the clauses --
MR. KOBRIN: I don't want you testifying right now. We don't have time for that right now. You

can clarify that later.

BY MR. KOBRIN:

Q The testimony is that he was going to draft a report. Is that correct, Mr. Catizone?

A No, I don't recall --

Q What did you give Dr. McCann?

A I don't recall, sir.

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q You don't recall.

Did you give him anything in writing to explain your flags?

MR. ELSNER: Objection.

A I don't recall.

BY MR. KOBRIN:

Q You don't recall.

How did he know what to do to run these algorithms to flag the proper prescriptions that you aimed to identify?

MR. ELSNER: Objection.

A I don't recall, sir.

BY MR. KOBRIN:

Q You don't recall what you gave him, how you instructed him?

A No, sir.

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q Okay. Did you do any research on how researchers or academics who study pharmacy science and health administration have defined doctor shopping?

MR. ELSNER: Objection.

A My research would be the references included in the report and then my involvement in cases and work with the DEA, sir.

BY MR. KOBRIN:

Q I think you already testified that you didn't do any research on how boards of pharmacy measure doctor shopping, correct?

MR. ELSNER: Objection.

A No, sir. I didn't. I didn't testify --

BY MR. KOBRIN:

Q Yesterday when -- yesterday when Mr. Bush was asking you questions, I believe you said you were unaware of the Ohio board of pharmacies doctor shopping metric; is that correct?

A That specific metric, sir, yes.

Q In writing this report, then, did you review any documents that defined doctor shopping?

A Yes, sir.

Q And how did they define doctor shopping?

A Those documents are included in my references and they defined them as I've indicated my opinion, that's my interpretation and analysis of what doctor shopping is, sir.

Q So you stand by the -- strike that.

You rely on the documents stated in your report for their definition of doctor shopping rather than the Ohio Board of Pharmacy's definition of doctor shopping that you were shown yesterday, correct?

A I relied on that information and my experience and the fact that the actual definition of doctor shopping by the Ohio Board of Pharmacy is more than one practitioner, so the Ohio Board of Pharmacy's definition is more stringent than my definition, sir.

Q I'm not sure where that's coming from but we can talk about that later if there's time. I'm interested as to where you found that.

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q So you said you did review some documents that defined doctor shopping. Let's flip to page 20 of your report real quick. Section B of your "Controlled Substances," sorry, just before

Section 3, the paragraph just above it, the end of that paragraph. Do you see where it says -- I'm going to read from your report: "As rates of PDMP participation increased, measures of doctor shopping and prescribing of certain controlled substances declined. The data suggests that PDMP utilization helps to promote medically warranted prescribing and dispensing and assists in detecting possible controlled substance misuse and diversion."

Did I read that right?

A Yes, sir.

Q And that's what you wrote in your report, correct?

A Yes, sir.

Q When you say, quote/unquote, measures of doctor shopping, what measures of doctor shopping are you referencing?

A The actual incidence of doctor shopping that would be recorded in the PDMP, sir.

Q Well, what's the metric for doctor shopping in the PDMP?

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q What's the measure?

A Sure.

In the 30-some cases that I've reviewed or served as an expert witness, in all those cases I've accessed the PDMP data. And when you analyze the PDMP data, you look at the number of prescribers and you look at where those prescribers are based, whether they're in the same practice or not, whether or not the patient is going to different practitioners, and so you formulate a metric based upon the PDMP data of how many prescribers that patient is seeing for those medications. That's the metrics in the analysis, sir.

Q What is doctor shopping based on that analysis?

A Based upon the Ohio Practice Act Rules, it's more than one prescriber prescribing the same controlled substances or controlled substances, and my interpretation that was just written in the report is what I view as the red flags.

Q Okay. So when you run the report, you didn't actually cite anything -- you didn't actually cite anything in the Ohio practice rules. You cited an article by the PDMP Center for Excellence article, mandating PDMP participation by medical providers. Do you see that in Footnote 18?

A What page, sir?

Q It's the footnote that follows right after the sentence I just read, footnote 18 at the bottom of page 20.
A Oh, okay, yes, sir.
Q You didn't say cite any Ohio practice rules that you allege right now, that you relied upon. You actually cite this from the article. Do you know what that article is?
MR. ELSNER: Objection.
A The article that's cited, sir?
BY MR. KOBRIN:
Q Yes.
A Yes, I do.
Q Is that one of the articles you relied on to understand how practitioners and others within the industry measure doctor shopping?
A The article didn't -- the article just spoke about doctor shopping and the information contained in my report. The information from the Ohio medical board came, because yesterday, Mr. Bush represented that the standard in Ohio was five or more based on OARRS reports. And yesterday evening, I actually reviewed the Ohio practice act and regulations and found out that that was not the case. That the Ohio board, so therefore, would not have been a

reference in my report because that information was --

(Simultaneous conversation.)

A -- yesterday.

MR. KOBRIN: Move to strike.

BY MR. KOBRIN:

Q Is this article what you're relying on for your statement that: "As rates of PDMP participation increased, measures of doctor shopping and controlled substances declined"?

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q What did you rely on to know that fact?

A Sure.

That was one of the sources. The other sources was information from the PDMP programs. NABP operates a steering committee for all of the PDMP programs. And that steering committee meets with the administrators of all the PDMP programs and all the states once a year. And at that meeting, that discussion occurred.

And people reported that when they utilized PDMP, and provided information on doctor shopping to pharmacists and prescribers, or pharmacists and prescribers accessed, and saw doctor shopping, that

helped decrease the incidence of that.
Q But you don't know how those people were measuring doctor shopping or the incidence of doctor shopping, do you?
A They were using similar standards, looking at the number of prescribers that I did in my analysis of this situation.
Q Did that article, Footnote 18, use a similar standard as you did in your analysis of this situation?
A Again, it was one of the resources that I utilized and provided more background information. But my actual analysis came based upon actual PDMP reports that I reviewed and interactions with the PDMP administrators across the country.
Q I'm asking you if the article you cited in support of the statement I read used similar standards as you in measuring doctor shopping.
A I don't recall the specifics of the article. It was one of the sources I used, sir.
Q All right. And that's the only article that you cite for that statement, correct?
MR. ELSNER: Objection.
A It's for that statement, but there are other articles cited in the document that reference how

valuable PDMP is and how they have an impact on the red flags.

BY MR. KOBRIN:

Q Did you cite any other articles in your report that measured doctor shopping --

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q -- or that you relied on for their measure of doctor shopping?

MR. ELSNER: Same objection.

A I would have to go through the report and check to make sure. At this point, I can't say definitively, but I'm sure that there were probably other references that I used besides my experience, sir.

BY MR. KOBRIN:

Q Right now that's the only one that you cited that we've found, correct?

MR. ELSNER: Objection.

A That's the only one on that page. I said there are probably others in the report, sir.

BY MR. KOBRIN:

Q Okay. That's the only one that you cite here, correct?

MR. ELSNER: Objection.

A Yes, sir. Again, for the -- that's the only one on this page, but there are probably other sources of references throughout the document.

BY MR. KOBRIN:

Q Do you remember yesterday, Mr. Bush also asked you several questions about drug cocktails?

A I remember some of the discussions, sir, yes.

Q The measure you applied for the opioid and benzodiazepine drug cocktail in Number 5, this is on page 39 of your report, that flagged prescriptions if they were dispensed within 30 days of one another, correct?

A Sorry, what page was that, sir?

Q 39.

A Okay. And what section?

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q "Section 5, Drug Cocktail, an opioid and benzodiazepine."

I'll just repeat my question for clarity.

The measure you applied for the opioid and benzodiazepine drug cocktail at Number 5, that measure flagged prescriptions if they were dispensed within 30 days of one another, correct?

A Is that reference to page 40?

Q I'm on page 39. Are you in your supplemental report?
A Yes.
Q May of 2021?
A But the actual data and table for that appears on page 40. It says: "An opioid and a benzodiazepine were dispensed to a patient within 30 days of one another."

Is that the reference.

Q Right. I'm referring to that section, which starts on page 39, but we can look at page 40 if you want.
A I was just trying to find out where you were, sir.
Q That's fair.

So that flagged prescriptions if they were dispensed within 30 days of one another, correct?

A Yes, sir.
Q On what basis did you pick 30 days?
A Based upon, again, my review of prior prescription programs, profiles, PDMPs within that time period. It would create that problem noted on page 39, that the combination of an opioid and a benzodiazepine would create an increased risk of respiratory depression because those two drugs would still have the potential to interact during that time frame, sir.

Q Did you use 30 days for all the defendants?
A Yes, sir.
Q Is that because you wanted to measure dispensing consistently across all the defendants?
A Yes, sir.
Q Consistency is important, especially when you are comparing red flags in a chart like you do on page 40, correct?
MR. ELSNER: Objection.
A Yes, sir.
BY MR. KOBRIN:
Q You don't want to measure dispensing within 20 days for one defendant, 30 days for another, do you?
MR. ELSNER: Objection.
A No, sir.
BY MR. KOBRIN:
Q You wouldn't want to do that.
So is it your opinion that your metric applied consistently across the data sets provided by all the defendants?
A It would be my testimony that Mr. McCann applied that across all the data sets consistently, yes, sir.
Q And that's your opinion, right, that this metric is being applied consistently across CVS, Walgreens,

Walmart, Giant Eagle, HPC, and Rite Aid, correct?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. KOBRIN:

Q And it's your opinion that if we picked a month during the discovery period, January of 2008, the metric that's being used in this test, this drug cocktail test, that would apply consistently to all defendants in that month, correct?

MR. ELSNER: Objection.

A I can respond again to the prior question. It would be my expectation and my instruction that it should be applied consistently, whether it's one month or whether it's the total data set, sir.

BY MR. KOBRIN:

Q Same for the holy trinity red flag at Number 4 on page 37. That would also apply consistently across all defendants?

MR. ELSNER: Objection.

A All of the data in the report should be applied consistently, sir.

BY MR. KOBRIN:

Q It's an apples-to-apples comparison between one defendant pharmacy and another defendant pharmacy, correct?

MR. ELSNER: Objection.

A Yes, sir.

BY MR. KOBRIN:

Q All right. Near the top of page 47 of your report, you describe the way you measured same hour prescribing.

Do you see that?

A Yes, sir.

Q According to your report you wanted this to flag a prescription when: "An opioid was dispensed to at least three different patients within an hour, and the opioid prescriptions were for the same base drug, strength, and dosage form, and were written by the same prescriber."

Did I read that correctly?

A Yes, sir.

Q So the reason you named this flag same hour prescribing, is just that its defining feature, right? These scripts had to be dispensed to these three patients within an hour of each other, right?

A That was one of the defining factors, sir. The other was the fact that they would be the same medications, dosages, strengths, and quantities.

Q Did you name this or is that Dr. McCann? Did you name it "same hour prescribing"?

MR. ELSNER: Objection.

A I'm sorry. I didn't understand the question. I apologize.

BY MR. KOBRIN:

Q Did you name this, this metric, same hour prescribing there, did you name it that?

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q The other one is same day prescribing and this one, same hour prescribing. Did you name it same hour prescribing?

A When the data came back in the data run, yes, I did name it that within -- because that's what the data set showed when they ran the data, so I entitled that as well.

Q Did you instruct Dr. McCann on this data run or did he do this and give you the data and tell you what he found?

MR. ELSNER: Objection.

A Mr. McCann ran the data.

BY MR. KOBRIN:

Q You didn't give him any instruction on this one?

A I think --

MR. ELSNER: Objection.

A I'm sorry.

BY MR. KOBRIN:
Q Your answer?
A I said, no, sir.
Q What expertise does Dr. McCann have to decide that any dispensing within an hour is relevant at all to this case?
MR. ELSNER: Objection.
A I think Mr. McCann's expertise is in analysis. And performing that analysis if other numbers looked interesting or significant to what the original question was, Dr. McCann would present those to me. And I would make a determination of whether or not that information was useful or not, sir.
BY MR. KOBRIN:
Q So Dr. McCann formulated this red flag, correct?
MR. ELSNER: Objection.
A No. He just simply used the red flag that I gave him and did additional analysis to see if there was other data points or data information that would be useful to me.
BY MR. KOBRIN:
Q What red flag did you give him that led him to do this analysis?
A The red flag was the pattern prescribing that appears on page 46 that said, look for patients

that receive the same medications from the same prescribers in the same quantity strengths and such. That was the instruction given to him.

Q And he added this one-hour element; is that correct?

MR. ELSNER: Objection.

A In analyzing the data, this information came up, that he asked to me whether it was significant or not, and it helped to clarify or it helped to further explain how prevalent and how significant this red flag was.

So I said, "Yes, that would be interesting data.

BY MR. KOBRIN:

Q How did he ask you? Is this a phone conversation, an email, a document he sent you?

MR. ELSNER: Objection.

A The information came to me provided through counsel, so I don't know how that information was provided.

BY MR. KOBRIN:

Q But you knew that information was from Dr. McCann?

A Yes.

Q And was that in written form?

A Again, the information was provided to me by

counsel, so I don't know how it --
Q In written form? It was provided to you in written form?
MR. ELSNER: Objection. Do not discuss how --
MR. KOBRIN: If he's relying on this, I think we're going to need to go off the record because we're running out of time and I would like Special Master Cohen to make a judgment on this.
Could we go off the record?
MS. FUMERTON: I agree with that.
MR. KOBRIN: We can go off the record.
THE VIDEOGRAPHER: Off the record at 11:12 a.m.
(A recess was taken.)
THE VIDEOGRAPHER: We're going back on the record at 11:58 a.m.
BY MR. KOBRIN:
Q Mr. Catizone, good to see you again. I just want to clarify the record from where we left off before, if that's okay?
A Yes, sir.
Q Could you -- thank you. Now I can see you.
Just to clarify, your testimony earlier reflected you had some communication with Dr. McCann, through attorneys or otherwise, through

which you communicated a description of the red flag you wanted him to run on the data, correct?

A Yes, that was a verbal conversation, sir, yes.

Q And Dr. McCann or his staff, through attorneys or otherwise, then provided you with information and data and asked you if it was significant or not, and whether it helped clarify or further explain a red flag, correct?

MR. ELSNER: Objection.

A No, sir, that's where I made a mistake. If I can explain?

BY MR. KOBRIN:

Q Please.

A So in working with legal counsel, I began drafting a report which I referred to as a draft report, that's noted in the invoices that we discussed yesterday. Whatever conversations, whatever data analysis was conveyed to Mr. McCann was through legal counsel. I never spoke or interacted with him directly beyond that first phone call.

Information then from Mr. McCann was inserted into my draft report by counsel and I reviewed that information through my draft reports, sir.

Q So your understanding was that information was inserted from Dr. McCann into your draft report,

which you then edited and integrated into your draft report?

A Yes, sir.

Q And that information, as you previously testified, you understood to be coming directly from Mr. McCann through counsel to you?

A I didn't know where that came from. I worked directly with counsel. Whatever conversations occurred or where it came from, I don't know, except I asked for the analysis of my red flags and that was provided to me back by counsel.

Q You previously testified that that information came from Dr. McCann. Did you have conversations with Dr. McCann about that information?

A No, sir. And in answering your question, I erred by focusing on the substance in trying to answer the question you were asking. And I didn't realize that the process was that important to these proceedings. And so, I misspoke or left out the detail that all of my connections, all of my conversations were directly with legal counsel, and what happened on the other side of that, I have no idea.

Q Mr. McCann was never on those calls with you and legal counsel?

A Just the two calls that I referenced yesterday. The first call where I verbally explained what my red flags were, and then a second call after the supplemental data was analyzed.

Beyond that, I had no direct contact with Dr. McCann at all, sir.

Q Was one of the things that was inserted into your report, these boxes, where it says "Defendant CVS, Walgreens, Walmart, HBC, Rite Aid" across the top?

A I'm sorry.

Q Were those inserted into your report?

A What --

Q The boxes that you have under each red flag where the first row is "Defendant CVS, Walgreens, Walmart, HBC, Rite Aid," were those boxes inserted into your report?

MR. ELSNER: Objection.

A The data was inserted there and then I made the boxes as part of the format, but the data was provided to me.

BY MR. KOBRIN:

Q In what format was the data provided?

A Numbers under the text.

Q So when -- there were just numbers, they weren't in a box, they weren't in a grid?

A No, sir.
Q And those numbers you understood were communicated by Mr. McCann to counsel to you, correct?
MR. ELSNER: Objection.
A That was a direct conversation with counsel, so...
BY MR. KOBRIN:
Q Well, you understood that Dr. McCann was doing the numbers crunching for you, correct?
A That was my understanding, sir.
Q Counsel wasn't doing the number crunching, correct?
A No. I just replied that I understood that it was Dr. McCann running the numbers, sir.
Q So any numbers that were inserted into your draft reports were from Dr. McCann or his staff, correct?
A That would be the assumption, sir.
Q Did you ever receive any emails that were forwards of emails with Dr. McCann and counsel?
A No, sir.
Q Did you ever see any emails through any means between Dr. McCann and counsel?
A No, sir.
Q Did you have any communications on the phone or otherwise with Dr. McCann's staff?
A No, sir, just the two conversations with Dr. McCann that I've already testified to.

Q You never communicated directly or indirectly to your knowledge with anyone on Dr. McCann's staff?
A I have not, sir. I did not, sir.
Q All right.
MR. KOBRIN: Can we go off the record for a moment?
THE VIDEOGRAPHER: We're going off record at 12:03 p.m.
(A recess was taken.)
THE VIDEOGRAPHER: We're going back on the record at 12:10 p.m.
BY MR. KOBRIN:
Q Mr. Catizone, you worked at a pharmacy, right? I believe you said you worked at Albertsons in Chicago; is that correct?
A Osco Drug, sir, yes.
Q When you worked there, what dispensing software was the pharmacy using?
MR. ELSNER: Objection; asked and answered.
A I don't recall, sir.
BY MR. KOBRIN:
Q PDX?
A I don't recall.
Q You don't recall?
Do you know that not all data regarding hour

and minute actions were collected in that system you used?

MR. ELSNER: Objection.

A I don't recall the system, so I can't answer the question, sir.

BY MR. KOBRIN:

Q Do you know generally that not all hour and minute actions -- strike that.

Do you know generally that not all actions -- strike that.

Do you know generally that there's not a record made of the hour and minute that all actions are taken in pharmacy dispensing systems?

A I know in general that the pharmacy system records the actual hour and minutes that a prescription is entered into the system and then also at the point of sale that the hour and minute that that's actually transacted is recorded in the system, sir.

Q When did the leading pharmacy dispensing systems in the market begin adding the hour and minute to the dispensing point of sale transaction?

A That's outside of my expertise, sir. I'm sorry, I don't know.

Q Do you know how pharmacy dispensing systems work?

A In general, sir, yes.

Q You know that at a certain point they did not capture that hour and minute for the dispense; is that correct, that that was a recent addition in the past ten years or so to the pharmacy dispensing systems?

A I do know that the pharmacy dispensing systems have changed over time and that they went from typewriters to computer systems. But I'm not sure when those other changes occurred, sir.

Q Do you know whether they collect an hour and data for the time that the sale is done, where the actual tech or pharmacists puts pills in a bottle?

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q Do you know that hour and minute when that's collected?

MR. ELSNER: Objection.

A Point of sale is when it's actually rang up, rung up, that is collected. When the technician puts the medications in the container, that's -- there's not a time that I'm aware of where that's recorded.

BY MR. KOBRIN:

Q So there's not a time stamp to show when the fill is done, pills in bottle?

A I think, sir, I'm being confused the sale. When

the sale transacts that is recorded, but what the actual --

Q I understand that.

I'm talking about the transaction being the fill, when the pills are actually put into the bottle. I think you understand, as you've stated, that that minute and hour, that is not recorded in the pharmacy dispensing system, correct?

A Yes, sir.

Q If certain hour and minute data was not collected for defendants in this case, did you intend for the same hour prescribing red flag to capture all prescriptions that were from the prescriber and for the same drug, but for which there was no available information about when the opioid was dispensed?

MR. ELSNER: Objection.

A First, I'm not sure of the question. But what I expected was data analysis of that particular red flag. Beyond that, I can't comment, sir.

BY MR. KOBRIN:

Q Well, did you expect it to pull in all situations in which there was the same drug and the same prescriber but there was no time stamp?

A What I expected is to have data analysis across all defendants for that particular red flag.

Q I think you earlier said that the same hour issue was one of the defining factors of the red flag, correct?
A The primary defining factors were the same drug, same strength, and same dosage. The time that was -- the time could be another more explicit determinant of that red flag.
Q Well, that's what distinguished it from the same day prescribing, correct, that and the lower number of patients, correct?
MR. ELSNER: Objection.
A Again, I'm sorry, sir. What do you mean by distinguish --
BY MR. KOBRIN:
Q Same hour prescribing was one of your flags and same day of prescribing was one of your flags, correct?
A Yes, sir.
MR. ELSNER: Objection.
BY MR. KOBRIN:
Q And the main difference between same hour prescribing and same day prescribing is that in same hour prescribing, it had to be in the same hour, and it only had to be three patients, correct?

A Correct, sir.
Q So you wouldn't have expected that if there were three patients who had the same base drug, strength, and dosage, much like the same day prescribing flag, if you have three patients, same drug, strength, and dosage, but there was no time stamp, did you expect that they would get flagged by the same hour prescribing flag --
MR. ELSNER: Objection.
BY MR. KOBRIN:
Q -- just because there was no time stamp?
A They would have gotten flagged, sir, in the prior data field that was listed above that, sir.
Q They shouldn't be flagged in the same hour prescribing sale then, correct?
MR. ELSNER: Objection.
BY MR. KOBRIN:
Q They had no hour.
A I think if they weren't part of the data set or didn't have the data to enter the data set, then they probably would not be recorded, sir. But I can't comment, that was Dr. McCann's analysis.
Q Well, they shouldn't have been in the same hour prescribing. They should have been in the same day prescribing because they would have met that

requirement, right?

MR. ELSNER: Objection.

A That would be my assumption as well, sir.

BY MR. KOBRIN:

Q Turn to page 51 of your report. These bullets on page 51, they list defendant and stakeholder policies related to cash payments, right?

A I'm sorry, sir, my 51 doesn't have any bullet points.

Q Sorry. They are not actual bullets, but it's Walmart, CVS, Walgreens, Rite Aid. Do you see where I'm looking?

A Yes, sir.

Q I want to focus on the NACDS one, if you could. It's the last one on that list of stakeholder policies and it says that -- it states: "Enforcement actions were nearly 87 percent of a physician's patients were paid case -- I think it means paid -- "cash for their prescriptions and acknowledges that that's a red flag."

Do you see that?

A I see that in the document, sir, yes.

Q Why is that 87 percent data point informative?

MR. ELSNER: Objection.

A NACDS put that in there and considered it an

important reason or an important red flag. From the perspective of a pharmacy and pharmacist, whenever a patient pays something for cash, a prescription or a visit and they have insurance, is a red flag asking the question, why would they not submit this to their insurance, and why are they paying out of their pocket.

BY MR. KOBRIN:

Q And 87 percent number, that told you something about the pharmacy and about the prescriber, correct?

MR. ELSNER: Objection.

A Again, sir, I apologize. I'm not following the question.

BY MR. KOBRIN:

Q These are enforcement actions in which 87 percent of a physician's patients paid cash for their prescriptions. That tells you about, in this case East Main, which I think is a pharmacy, that there's an enforcement action. It tells you about the physician for whom 87 percent of his patients paid cash, right?

A Yes, sir.

Q It tells you even if the pharmacy in East Main didn't do a ton of business, let's say that they

only dispensed a thousand scripts a day. Too many of them are paid in cash, right? Would you agree with that?

MR. ELSNER: Objection.

A No, sir. I don't agree with -- maybe I don't understand the example you're giving.

BY MR. KOBRIN:

Q 87 percent, that's too high a number for someone to be dispensing for one physician's patients in cash, right, or for one pharmacy to be dispensing all of a product or all of their controls in cash; is that right?

A NACDS said that. Holiday and East Main said that, so I would say, I would agree with what that is saying, sir.

Q That was what I was going to ask. Do you agree with that?

I think it's fair to say that 87 percent of opioid prescriptions being paid in cash is probably indicative of diversion, correct?

A I would disagree, sir, and say that one prescription could be indicative of diversion. The percentage is not important when it comes to diversion of a prescription and whether or not that prescription harms a patient.

Q Well, we would expect to see some cash payments, wouldn't we?
A Yes, sir. But we're talking about whether or not that cash payment was for a legitimate or not a legitimate prescription. Any prescription that's not legitimate is diversion and that's concerning whether it's one or a thousand, sir.
Q Right. But you're using this cash fact or -- as a flag, correct?
A As a flag for the pharmacist to conduct due diligence to ascertain whether or not it was for a legitimate medical order or not.
Q And if you're looking at a pharmacy and the defendants here are pharmacies, what percentage of cash payments for prescriptions constitutes an inappropriate amount? That's what I'm trying to get at. If you are judging a pharmacy on whether its dispensed prescriptions are being diverted, I'm just saying, I think it's fair to say that 87 percent of opioid prescriptions being paid for in cash is probably indicative of diversion at that pharmacy.
Would you agree with that?
A Yes, sir.
Q Would you agree that 50 percent of opioid

prescriptions being paid for in cash is also indicative of diversion?

MR. ELSNER: Objection.

A I think, again, when we're looking at percentages and the question that came up earlier about what is significant and what is not, when we're dealing with prescriptions that are not legitimate, that is the concern overall; and whether a pharmacy has 50 percent or 87 percent, the fact that there are patients paying for the prescriptions as a red flag needs to be resolved.

And, then, how much of that pharmacy's inventory or percentage is information the corporation has, and that the pharmacy should receive so the pharmacist could make a better decision. But as far as I'm concerned, 1 percent would be significant or one patient if that's not a legitimate prescription.

BY MR. KOBRIN:

Q Right. But we're not -- we don't know if that's a legitimate prescription. We're using this flag to decide whether we think it's a legitimate prescription, right?

A Correct. And we take each flag individually and analyze it, and then the pharmacy corporation has

to provide data to conduct the larger analysis as to what those percentages might be and whether or not those percentages should be included in the discussion or determination of the pharmacists.

Q So you have no opinion either way whether there's a certain number of a prescriptions at a pharmacy that would be an acceptable level of cash payments for opioid prescriptions?

A My testimony is that cash payments is a red flag and that a pharmacy has to evaluate those cash prescriptions.

Q But we've already established that a certain number you expect would be paid for in cash, I believe you yesterday you that generally only 87 to 90 percent of prescriptions are covered by some form of insurance, correct?

MR. ELSNER: Objection.

(Stenographer requested clarification.)

A Yes.

BY MR. KOBRIN:

Q You have no opinion as to whether a certain percentage would be an acceptable percentage of cash payments in order to assess the dispensing from a particular pharmacy?

MR. ELSNER: Objection.

A My opinion is that that is one of the factors that the pharmacist looks at to determine whether it's a legitimate prescription. But the percentage whether it's 10 percent, 20 percent, 80 percent, 90 percent, is secondary to the fact that the pharmacist and the corporation make a determination as to whether or not that's a legitimate prescription.

BY MR. KOBRIN:

Q What about the fact that you're looking at the number of cash prescriptions in an aggregate? Does they tell you anything about the defendants in this case? Shouldn't we be looking at all of these individually? You're looking at them in aggregate, correct?

A Yes, sir. What I've commented or testified before is that absent that documentation that would help me realize which prescriptions actually had red flags that were resolved or not, the aggregate data is important to identify that there was a pattern occurring and something that warranted concern because of the number of prescriptions and the number of opioids that were being distributed, sir.

Q But you could assess the whole prescription? You have all the information about the prescription.

Short of some PHI, you have the dispensing -- you have the dispensing pharmacist's name, you have the prescriber's name, you are have the dosage amount. You have all that information. Why can't you make the assessment?

MR. ELSNER: Objection.

BY MR. KOBRIN:

Q Why are you only dealing with this in aggregate?

MR. ELSNER: Objection.

A The only data I received in that regard were sample data from the individual defendants, but I did not look at the entire prescription database.

BY MR. KOBRIN:

Q So you're saying that you can't judge the percent of prescriptions for any particular opioid that were paid for in cash because every prescription has to be looked at individually, correct?

MR. ELSNER: Objection.

A Let me explain and see if I understand the question correctly, sir.

What I'm saying is that the percentages of the red flags that each of the defendants had in regard to what is significant or how many of those were actually red flags, I don't have that information -- I don't have that information absent

documentation.

And as far as I'm concerned in my opinion, the percentage is less important and not as important as the fact that the red flags existed and the red flags were resolved, whether that's 1 percent or 99 percent. The opinion is any red flag, any prescription with red flags should not have been dispensed by the defendants.

BY MR. KOBRIN:

Q But you said you need to look at each one individually, correct? You need to look at each prescription individually?

A In order to substantiate some of the questions that you're asking about the actual percentages and the actual number of prescriptions that were legitimate or not.

Q Well, you listed these pharmacies and I'm saying I'd like to ask for a particular brick and mortar pharmacy. What percentage of cash prescriptions would be an acceptable amount to be paid in cash? And you're saying you have no opinion about that because things need to be analyzed individually, correct?

MR. ELSNER: Objection.

A I think you're asking two different questions and

I'll respond to both of them as I understand them --

BY MR. KOBRIN:

Q I'm only asking one, sir, if you can answer my question.

A Sure.

The industry --

Q I'm saying --

A -- industry data says that the average pharmacists and average pharmacy, that 95 percent of the prescriptions processed are covered by insurance. That's what my testimony is.

I'm not saying what percentage that a pharmacy that processes cash would be determined to be diversion or not legitimate. Because pharmacies could process 10 percent of the prescriptions that are cash, and those 10 percent could all be diverted or not for legitimate purpose as well.

Q And they could all be perfectly acceptable and for legitimate purposes as well, correct?

MR. ELSNER: Objection.

A Correct, sir. That's why the percentage is there as a guide and that's why it's important to look at all the information.

MS. ZINMASTER: If I may just interject

quickly. Tara lost -- Ms. Fumerton lost audio. Can we go off the record for just a moment?

THE VIDEOGRAPHER: We're going off the record at 12:26 p.m.

(A recess was taken.)

THE VIDEOGRAPHER: We're going back on the record at 12:29 p.m.

MR. KOBRIN: I am going to pass the witness and if we have time remaining, I have a couple more questions. Thanks.

MR. ELSNER: Dr. Catizone, I've got -- do you have another --

MR. KOBRIN: No, I'm sorry. I meant pass it to Ms. Fumerton. She's the next questioner.

MR. ELSNER: Oh, I'm sorry.

MS. FUMERTON: Yes. I'm going to --

MR. ELSNER: That was important to get her back online.

MR. KOBRIN: That was why, we had to get her back on.

MR. ELSNER: I was right.

MR. KOBRIN: I'm sorry. I assumed that you got that because you were doing it. Right?

REDIRECT EXAMINATION

QUESTIONS BY TARA FUMERTON:

Q Thank you, Josh, and thank you, Mr. Catizone.

I'm going to be very brief and so I'm going to ask a series or yes-or-no questions, if you can keep to that, we'll be even briefer.

Mr. Swanson, this morning, asked you questions about blanket refusals to fill policies, correct?

A Yes.

Q You understood that Walmart pharmacists have always had the ability to refuse to fill any prescription that they felt was inappropriate for any reason, correct?

MR. ELSNER: Objection.

A Yes.

BY MS. FUMERTON:

Q And that meant that Walmart pharmacists could exercise their professional judgment and not fill a single prescription from a prescriber they felt was problematic, correct?

MR. ELSNER: Objection.

A That's my understanding, yes.

BY MS. FUMERTON:

Q And Walmart, through its evolution of policies, also began permitting its pharmacists to blanket

refuse to fill a prescription from certain doctors, correct?

A That, I'm not aware of.

Q Okay. Well, are you aware that at Walmart the blanket refuse to fill a prescription is a decision that is made by a single pharmacist in their professional judgment to not fill any prescriptions from a particular prescriber without looking at that individual prescription?

MR. ELSNER: Objection.

A That's not my understanding, but I thought you just mentioned earlier that Walmart permitted its pharmacists to do that. So it would seem that that decision was made based with Walmart's approval. So the corporation approved or allowed pharmacists to do that rather that the pharmacists exercising independent judgment. But I'm not familiar with that.

BY MS. FUMERTON:

Q So regardless, you understood that at any given time if a Walmart pharmacist didn't want to fill a prescription from a particular prescriber for a particular reason, they didn't have to do so, right?

A As long as the reason was justified, yes.

Q Are you familiar that Walmart, through its evolution of policies, began centrally blocking prescribers?

MR. ELSNER: Objection.

A No, I'm not familiar with that.

BY MS. FUMERTON:

Q Okay. You did not read the deposition of Walmart's corporate representative Sussane Hiland in this case, correct?

A I can't recall specifically if I did or not. I know I did read depositions from Walmart, but I can't recall that one specifically.

Q Do you know Ms. Hiland?

A Yes, I do.

Q Do you have a favorable opinion of her?

MR. ELSNER: Objection.

A I don't have an opinion one way or the other. I've worked with her professionally, but don't have an opinion.

BY MS. FUMERTON:

Q And you always found her to be professional, correct?

A In my professional interactions and all of our discussions we were always at the professional level, and I found them to be professional, yes.

Q Are you aware that Ms. Hiland testified that Walmart associates had conversations with various boards of pharmacies where those boards took the position that it would be inappropriate for a retail chain pharmacy to centrally block a prescriber?

MR. ELSNER: Objection.

A I don't recall the deposition, but I do know that that were -- that issue was raised, but I'm not sure because of the blanket refusal to -- for one physician. It was based upon the fact that the entire practice was going to be a blanket refusal and boards of pharmacy had issues with that rather than dealing with an individual prescriber based on information the pharmacy may have.

BY MS. FUMERTON:

Q And so I just want to make sure the record is clear and we're not talking past each other. So in the blanket refuse to fill, it's a pharmacist who is making the decision not to fill any particular prescriptions from a particular prescriber, correct?

MR. ELSNER: Objection.

A That would be my understanding, but you're referring to Walmart having a blanket policy and

Walmart, so you're suggesting that the corporation made that decision rather than the pharmacist's independent judgment.

BY MS. FUMERTON:

Q So what I'm distinguishing between is the pharmacist's decision and then also a corporate block policy or sometimes referred to as the "central block policy" where the corporate entity at home office would make a decision that none of its pharmacists nationwide could fill for a particular prescriber.

Are you familiar with that concept?

A I'm not familiar, but I don't understand how that central policy that impacts the pharmacist's individual judgment.

Q That's not my question.

Are you familiar with the concept of a centrally blocked prescriber?

A No, I'm not.

Q But you are aware that various boards of pharmacies have concerns about the home office making a decision for the pharmacist as to whether or not the pharmacists could fill a prescription, correct?

MR. ELSNER: Objection.

A That's not my understanding, no.

BY MS. FUMERTON:

Q Well, earlier you just testified that you knew that there were discussions at the boards of pharmacy about this, correct?

A Correct.

Q Are you aware that the Wisconsin pharmacy board has issued an administrative warning to Walmart citing evidence of professional misconduct because Walmart's corporate block policies were deterring pharmacists from exercising their independent clinic judgment?

MR. ELSNER: Objection.

A I'm aware of the case, but I think there was more to it than that.

BY MS. FUMERTON:

Q Are you aware that the Idaho board --

MR. ELSNER: Ms. Fumerton, you're out of time.

BY MS. FUMERTON:

Q Are you aware that the Idaho board --

MS. FUMERTON: I'm sorry?

MR. ELSNER: The time period has expired. I've given you another minute of latitude, but the time is now expired.

MS. FUMERTON: Are you not going to let me ask some more -- another question?

MR. ELSNER: I'll let you finish the question you started, but you've already exceeded your time, so you can ask about the Idaho board if you want. But I'm not going to let you continue down this line of inquiry unlimited. You've already used your ten hours.

MS. FUMERTON: All right.

BY MS. FUMERTON:

Q Are you aware, Mr. Catizone, that the Idaho Board of Pharmacy has also stated that Walmart's directive that certain doctors cannot have -- that Walmart's directive that certain doctors cannot have controlled substance prescriptions filled at Walmart pharmacies and, thereby, not allowing pharmacists to determine what constitutes a valid prescription is preventing pharmacists from fulfilling their legal obligations as a pharmacist from exercising their obligation of corresponding responsibility, which violates 21 CFR 1306.04A?

MR. ELSNER: Objection.

A I'm familiar with that.

MS. FUMERTON: So I would --

(Simultaneous conversation.)

MS. FUMERTON: -- counsel were prohibited from -- defendants from asking any further

questions at this point in time. I'd like to lodge an objection to the ten-hour limit that was imposed on the pharmacists -- on the pharmacy defendants, given that this is a new expert with an over-100-page report, and five defendants who all had questions that I know they were not able to ask, so...

MR. KOBRIN: Yeah. I'd like to specifically lodge an objection on behalf of Giant Eagle. We did not have enough time to ask the questions that we had prepared for today. Mr. Elsner, you won't let me go back and ask the remaining questions that I have?

MR. ELSNER: No, I won't. This is an order from Judge Polster with respect to the time, and you've had ample time to ask questions. If you didn't divide your time equally among counsel, I'm sorry. That's not my issue or Mr. Catizone's.

MR. KOBRIN: You're not --

SPECIAL MASTER COHEN: Your objections are all noted for the record, and I've also observed, Josh, that you are very good at interrupting the deponent but you're even interrupting cocounsel, and I really urge you to watch that. You've been stepping on Tara this whole time.

If you go back and look at the transcript, you'll see that you're interrupting her more than once.

So I think that brings things to an end.

MR. GISLESON: Rite Aid shares that objection as well. I would have asked more questions had the parties been given more time. The ten hours was inadequate.

MR. ELSNER: I'm sure every lawyer feels that way about every deposition. I would like to just pause for a minute, I want to make sure there's no issues that we want to clean up in redirect and I'll just go off the record. I should be able to do that in one or two minutes.

MS. FUMERTON: Okay. We'll come back.

THE VIDEOGRAPHER: We're going off record at 12:38 p.m.

(A recess was taken.)

THE VIDEOGRAPHER: We're going back on the record at 12:43 p.m.

CROSS-EXAMINATION

QUESTIONS BY MICHAEL ELSNER:

Q Mr. Catizone, will you please explain to us what the importance or significance is --

MS. FUMERTON: So Mike --

MR. ELSNER: Excuse me?

MS. FUMERTON: So Mike, you are asking questions? I thought we were going back to find out if you are. I'm trying to understand what's happening.

MR. ELSNER: I have maybe three questions to ask. Very brief.

MS. FUMERTON: Okay. Thank you.

MR. ELSNER: Sorry about that.

BY MR. ELSNER:

Q Mr. Catizone, I'm Michael Elsner from the law firm of Motley Rice on behalf of the plaintiffs. I'm just going to ask you just a few brief questions this afternoon.

Mr. Catizone, what is the importance or significance, if any, to a single opioid prescription that presents with a red flag?

A The significance of that is that medication is a very dangerous and harmful medication, and if that red flag is not resolved, and those medications go outside of the system, are diverted, or abused, that patient harm could occur and does occur.

Q So is it your testimony that every single red flag prescription must be resolved before it is dispensed?

A My opinion, and also information that's been conveyed to pharmacists by the DEA and boards of pharmacy as well.
Q And what must be done in your opinion with respect to each red flagged opioid prescription?
A The red flag needs to be resolved --
MS. FUMERTON: Object to form.
A The red flag needs to be resolved so that the pharmacist is assured that the prescription is for a legitimate medical purpose and that it won't create harm to the patient.
BY MR. ELSNER:
Q And does the resolution of that red flag need to be documented in any way?
A Yes.
MR. SWANSON: Objection.
BY MR. ELSNER:
Q What was the answer?
A Yes, it does.
Q And how many of those red flag prescriptions must be resolved and also documented?
MS. FUMERTON: Objection; form.
A Any prescription with a red flag must be resolved and documented.
BY MR. ELSNER:

Q Okay. So when you testified earlier that it would be generally significant of 70, 80 percent of red flag opioid prescriptions did not have documentation, was that correct?
A No.
MR. SWANSON: Object to form. Misstates his testimony.
BY MR. ELSNER:
Q What percentage of red flag opioid prescriptions in your opinion must be resolved and documented under the Controlled Substances Act, the Ohio Board of Pharmacy rules, and general pharmacy practice?
A 100 percent.
MS. FUMERTON: Objection; form.
MR. ELSNER: I pass the witness.
THE WITNESS: I'm sorry?
MR. ELSNER: I don't have any further questions.
MS. FUMERTON: Are we off the record?
THE VIDEOGRAPHER: We're going off the record at 12:45 p.m.
(A recess was taken.)
THE VIDEOGRAPHER: We're going back on the record at 12:49 p.m.
BY MR. GISLESON:

Q Mr. Catizone, it's John Gisleson again for Rite Aid.

You just testified that a red flag needs to be resolved so that the pharmacist is assured that the prescription is for a legitimate medical purpose and that it won't create harm to the patient.

Can you identify a single patient among the aggregate data you identified who, in fact, was harmed as a result in your view of a pharmacist for one of the chain pharmacies not resolving a red flag?

MR. ELSNER: Objection.

A Mr. Gisleson, I can't say that to a specific prescription, but I could say the overall aggregate data in opioid overdoses and deaths would indicate that there were patients that were harmed and actually died from those prescriptions dispensed.

BY MR. GISLESON:

Q As an expert in this case, you made no effort to identify a specific patient, included among the aggregate data, who, in fact, was harmed, correct?

MR. ELSNER: Objection.

A I did not perform any analysis to that extent, sir.

BY MR. GISLESON:

Q So that when you're asked under oath at trial,

based on your review of aggregate data, if you can identify a single patient in Lake or Trumbull County among your flagged prescriptions, who, in fact, was harmed, your answer will be no, correct?

MR. ELSNER: Objection.

A If that question is asked, then that would be my answer.

MR. GISLESON: Those are the questions I have. Josh?

RECROSS-EXAMINATION

QUESTIONS BY JOSHUA KOBRIN:

Q Returning to the red flags you were just testifying about on redirect, why did you choose a distance of 25 miles as a red flag metric for the distance patients traveled to visit a prescriber?

MR. ELSNER: Objection; it's beyond the scope.

SPECIAL MASTER COHEN: That's sustained.

MR. KOBRIN: So you're not going to allow me to ask that question, Special Master Cohen?

SPECIAL MASTER COHEN: Right. That's something that you delved into before and was not asked by Mr. Elsner during the last go-around.

MR. KOBRIN: I'm sorry. That I delved into before or just that defendants did?

SPECIAL MASTER COHEN: It's beyond the scope

of Mr. Elsner's questioning.

MR. KOBRIN: Anyone want to ask him any other questions for the defense that they want to ask that are within the scope?

We pass then.

MR. ELSNER: Thank you very much.

MS. FUMERTON: And I just -- I think this is on the record --

MR. ELSNER: Can we go off the record? I think the deposition is closed at this point.

THE VIDEOGRAPHER: We are going off the record at 12:52 p.m.

FURTHER THE DEPONENT SAITH NOT

_____

CARMEN A. CATIZONE, MS, RPh, DPh

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

I, Amy Doman, Stenographic Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Shorthand Reporter, Notary Public in and for the County of Hamilton, State of Indiana, at Large, do hereby certify that CARMEN A. CATIZONE, MS, RPh, DPh, the deponent herein, was by me first remotely duly sworn to tell the truth, the whole truth, and nothing but the truth in the aforementioned matter;

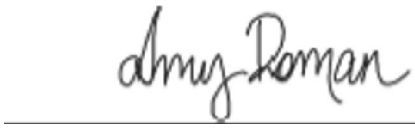
That the foregoing deposition was taken on behalf of the Defendants, in Mount Pleasant, South Carolina, on Wednesday, June 16, 2021, pursuant to the Federal Rules of Civil Procedure;

That said deposition was taken down in stenographic notes and afterwards reduced to typewriting under my direction, and that the typewritten transcript is a true record of the testimony given by the said deponent; and that signature was requested by the deponent and all parties present;

That the parties were represented by their counsel as aforementioned.

I do further certify that I am a disinterested person in this cause of action, that I am not a relative or attorney of either party or otherwise interested in the event of this action, and that I am not in the employ of the attorneys for any party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 21st day of June, 2021.



Amy Doman, RMR, CRR, CSR
Stenographic Reporter
Notary Public

My Commission Expires:
September 30, 2025,
Residing in Hamilton County, Indiana

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

June 21, 2021

To: Michael E. Elsner

Case Name: National Prescription Opiate Litigation - Track 3 v.

Veritext Reference Number: 4628785

Carmen A. Catizone, MS, RPh, DPh Deposition Date: 6/16/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4628785
CASE NAME: National Prescription Opiate Litigation - Track 3
DATE OF DEPOSITION: 6/16/2021
WITNESS' NAME: Carmen A. Catizone, MS, RPh, DPh

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Carmen A. Catizone, MS, RPh, DPh

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4628785
CASE NAME: National Prescription Opiate Litigation - Track 3
DATE OF DEPOSITION: 6/16/2021
WITNESS' NAME: Carmen A. Catizone, MS, RPh, DPh

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Carmen A. Catizone, MS, RPh, DPh

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET

VERITEXT LEGAL SOLUTIONS MIDWEST

ASSIGNMENT NO: 4628785

PAGE/LINE(S) / CHANGE /REASON

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Date Carmen A. Catizone, MS, RPh, DPh

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

DAY OF _____, 20_____ .

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Notary Public

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Commission Expiration Date

b

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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